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DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, EDUCATION, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1983

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

PART 1—(Pages 1-605)

Department of Labor
Action
Corporation for Public Broadcasting
Federal Mediation and Conciliation Service
Federal Mine Safety and Health Review Commission
National Commission on Libraries and Information Science
National Commission on Student Financial Assistance
National Labor Relations Board
National Mediation Board
Occupational Safety and Health Review Commission
President's Commission for the Study of Ethical Problems in Medicine and Behavioral Research
Railroad Retirement Board
U.S. Soldiers' and Airmen's Home

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DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1983

MONDAY, MARCH 15, 1982

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 9:35 a.m., in room 1114, Everett McKinley Dirksen Senate Office Building, Hon. Warren Rudman presiding.

Present: Senator Rudman.

DEPARTMENT OF LABOR

STATEMENT OF ALFRED M. ZUCK, ASSISTANT SECRETARY FOR ADMINISTRATION AND MANAGEMENT

ACCOMPANIED BY:

- ROBERT COLLYER, DEPUTY UNDER SECRETARY FOR EMPLOYMENT STANDARDS
- JANET NORWOOD, COMMISSIONER, BUREAU OF LABOR STATISTICS
- THOMAS KOMAREK, ACTING ADMINISTRATOR, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS, EMPLOYMENT AND TRAINING ADMINISTRATION

SUBCOMMITTEE PROCEDURE

Senator RUDMAN. The subcommittee will come to order.

Today we will hear testimony from the Labor Department concerning bill language and appropriations adjustments requested for fiscal year 1982.

We will also use this hearing to discuss other Labor Department issues which may be raised by Members of Congress on either the next supplemental appropriations bill or the extension of the continuing resolution.

The principal witness is Mr. Al Zuck, Assistant Secretary for Administration and Management. Please introduce your associates and proceed with your opening statements, and summarize it if at all possible.

INTRODUCTION OF ASSOCIATES

Mr. ZUCK. Thank you, Mr. Chairman.

On my left is Dr. Janet Norwood, with the Commissioner of Labor Statistics. On my right is Bob Collyer, the Deputy Under Secretary for Employment Standards. On my far right is Thomas Komarek, the Acting Administrator, Office of Financial Control and Management Systems, Employment and Training Administration.

We also have Mr. Ford, the Assistant Secretary for Mine Safety and Health Administration, in the event any questions on mine safety come up. And also Mr. Ronald St. Cyr, the Deputy Assistant Secretary for Labor-Management Relations. And David Zeigler of the Occupational Safety and Health Administration.

Mr. Chairman and members of the committee, I am pleased to appear before you today to discuss the Department's fiscal year 1982 requests for supplementals, rescissions, and deferrals.

I am accompanied by representatives of each agency which has a supplemental or rescission request before your committee. These individuals will be happy to respond to specific questions involving their agency programs after I have presented this overview statement.

The Congress has already taken prompt action on the $2.3 billion supplemental providing additional authority needed to maintain unemployment insurance benefits and State administrative support for the unemployment insurance and employment services. The remaining 1982 changes now pending before this committee include supplemental authority to transfer—not new appropriations, but to transfer—$19.8 million to four salaries and expense appropriations, a deferral of $88.5 million in the employment and training assistance appropriation, and a rescission of $2.1 million in the Mine Safety and Health Administration funding.

In the employment and training assistance appropriation, the Department is proposing a deferral of $88.5 million. This amount does not represent a real reduction in ETA resources for fiscal 1982, since the $88.5 million relates to a like amount of unplanned unobligated carryover from 1981 which is available in 1982.

The Department is proposing to transfer $19.8 million of this amount to salaries and expenses accounts for four departmental agencies to enable them to continue important enforcement, data collection, and grant administration activities.

As our deferral message indicates, another portion of the $88 million deferral may be used to defray the cost of the civilian and executive pay increases, when the administration forwards its overall pay supplemental policy to the Congress.

Our justification materials indicate that the current estimate of additional needs for pay totals $21.7 million. The disposition of the remainder of the deferral is under review pending the establishment of final full-year funding levels for fiscal year 1982.

I would like now briefly to discuss the $19.8 million in supplemental transfer funding in the four agencies.

The approval of these supplemental requests to provide for the remaining 6 months of fiscal year 1982 is of paramount importance. The President's September request for 1982 salaries and expenses appropriations brings our total end-of-year 1982 staffing levels to 19,119, a reduction of 1,972, or 9.4 percent from fiscal year 1981. When considered from the actual onboard strength of 23,357 on December 31, 1981, or at the beginning of the Reagan administration, the fiscal year 1982 end-of-year staff levels represents a reduction of 4,238, or 18.1 percent.

These numbers show that we have taken seriously the President's staff reduction goals. We believe that we are now at a barebones staff level, and that in the 1982 request are very nearly at our 1983 targets. These supplementals will simply permit agencies to operate at the already significantly reduced levels.

Without these funds, agencies which have already experienced substantial reductions in force, or which have not replaced staff lost through attrition, will be forced to furlough remaining staff for significant periods of time. I believe that the kind of disruption to functions of the agencies involved that would result from furloughs is unnecessary, and I urge you to take action on our supplemental transfer requests.

I will now address each agency in some detail.

The Department is seeking supplemental transfer authority of $8,742,000 for the program administration account of the Employment and Training Administration. These additional funds will provide ETA with sufficient resources to maintain approved staffing levels through the end of the fiscal year.

Without this added funding, ETA would be forced to furlough all staff for approximately 6 weeks, thus creating significant disruption in grant administration activities, as well as having adverse effects on staff morale and productivity—$1 million of this supplemental is for the Veterans Employment Service staff, to maintain 225 positions throughout 1982, as mandated by Congress.

In addition, $1.1 million is for the Bureau of Apprenticeship and Training positions, which the Congress also directed be maintained at a higher level than previously requested by the administration. ETA has already sustained a reduction in force of more than 400 staff in this fiscal year to live within approved ceilings and resource levels. This supplemental will allow the agency to maintain its reduced level without further adverse effects on program operations.

The Labor-Management Services Administration seeks 1982 supplemental transfer authority of $1,157,000. This funding will restore LMSA to the 1982 budget request made by the President last September, and will allow the agency to fund critical automated data processing systems in support of its various enforcement programs.

The Employment Standards Administration is seeking 1982 supplemental transfer authority of $4,259,000. These added funds will allow ESA to fully fund approved staff levels in its wage hour, workers' compensation, and executive direction activities. If the additional resources are not made available, ESA would be forced to furlough two-thirds of the entire agency staff for 15 days. ESA has already conducted a reduction in force of 215 persons to get down to the approved ceiling and resource levels.

The Bureau of Labor Statistics is seeking supplemental transfer authority for $5,623,000. These additional resources are needed to fund approved BLS staffing levels and to avoid substantial staff furloughs. In addition, they are needed to continue contracts with the Bureau of the Census and State agencies necessary to assure the quality of our major employment and price statistical series. The ability of BLS to produce periodic data series, particularly in the area of prices and labor force statistics, would be seriously affected by the lack of a supplemental.

The Occupational Safety and Health Administration is seeking a language change to increase the limitation found in OSHA's appropriations language on the amount that can be made available for State grants under section 23(g) of the OSHA statute. The language change further addresses the Secretary's authority to grant final approval of State plans which provide staffing levels equivalent to Federal levels. This language change does not require additional funding above the amounts approved by the Congress in the continuing resolution.

The Department is seeking a rescission of $2,095,000 in the Mine Safety and Health Administration appropriation. This rescission is related to the prohibition in the continuing resolution against inspecting stone, sand, and gravel mines. The amount proposed for rescission represents unneeded funding requested initially for sand and gravel inspections. The Congress has received an amended rescission proposal from the President indicating that $2 million of the original estimate of sand and gravel savings is now being used to provide additional coal mine inspections.

This concludes my overview statement, Mr. Chairman. I and my colleagues will be happy to respond to any questions you might have.

EFFECTS OF POSTPONING SUPPLEMENTAL ACTION

Senator Rudman. Thank you, Mr. Zuck.

I'm sure you're aware that in the Congressional Record of February 10, 1982, Chairman Hatfield and Senator Schmitt both indicated their intention to consider added funding at the proper time on a timely basis regarding any intended layoffs of the Labor Department.

Aren't these assurances sufficient to prevent the actions you're talking about until we have time to act in a timely manner on these supplementals, which is usually, I believe, late May or early June?

In other words—I guess I'm combining two questions in one: Just what is the timetable, assuming nothing happens here, for the effects you have recited in your opening statement?

Mr. Zuck. Certainly, Mr. Chairman, we appreciate very much the assurance of the chairman of the full committee and the chairman of the subcommittee that we should not embark upon any additional furloughs or reductions in force, and that it was likely that the supplemental transfers that we are requesting would be approved.

The problem we face is that if we wait for a regular supplemental bill, the normal timing of that I believe would be for the House perhaps to report a bill sometime in June. The normal time in which we get a first supplemental is some time in the middle—if not in the late—summer. With the significant dollar amounts involved in these four agencies, plus the fact that the administration will be sending shortly supplemental requests for pay raise, should we be required to absorb any of that or not have the funds in hand, we would be in the posture of having to take even more adverse effects or impact on staffing levels.

The later in the year that these funds are provided—and if they are not provided in their entirety—the more severe the problem becomes.

If, for example, funding should not be provided, as in this request, three of our agencies, the Bureau of Labor Statistics, the Employment Standards Administration, and the Employment and Training Administration, would have to embark on major furloughs for perhaps as many as 6 to 8 weeks.

In the case of the Bureau of Labor Statistics, that means that you would be just about shutting down an entire agency for about 20 days, which would almost preclude the issuance of the very important statistical indicators that BLS issues. And for that reason we have felt that it was important that these supplementals be put on a faster track than the others.

Moreover, we're under legal limitations under the apportionment of funds under the continuing resolution. The continuing resolution specifies a precise—or is translated into a precise dollar amount. And we do not have deficiency apportionments approved that would permit us to operate at the higher level, so that in effect we could be in violation of the Antideficiency Act.

Senator RUDMAN. Well, of course, that is a specific problem issue which was implicit in my question.

That aside just for a moment, with your present level of funding in each of these accounts, or at least in whichever accounts you wish to address your answer to, is it not true that if in fact we waited until June or July and at that time funded the level that you're asking for in the supplementals, that in fact you would not have to take any specific additional action toward your employment over there at this time or until that point?

Mr. ZUCK. If we did not receive the supplementals let's say until July 1——

Senator RUDMAN. And assuming that they came in at the levels that you have requested.

Mr. ZUCK. Assuming they came in at the levels, we would have some severe problems even with that. In the case of the Bureau of Labor Statistics, a major portion of this request, funds contracts that go to the Bureau of Census; Census in turn is being affected by the absence of funding. And I'm not sure how far we can extend these assurances to other agencies of the Government.

We believe that it is imperative that these funds and the supplemental transfers we're requesting be made available to us by May 1, rather than let's say July 1.

Senator RUDMAN. I'm still not sure I have a specific answer to my question. You may not be able to give me a specific answer.

I guess what I'm trying to get the feeling for here is that being a good manager, you're in here at a propitious time; that you believe action at this time will even out any possible bumps that you have or your problems down the road.

Dr. Norwood is shaking her head.

IMPACT ON BLS OF POSTPONING SUPPLEMENTAL

Dr. NORWOOD. No, sir, I don't think that that is a fair presentation of our situation. Obviously we want to be good managers, and I'm sure that you and the Congress would like us to be.

We clearly have to know how much money we have to spend. Our problem is much broader than that, I believe, because if we are going to be responsible we need to know how much we can spend in each month.

We have, as Mr. Zuck has pointed out, problems with illegal action, given the legal apportionment requirements. Now if you set that aside, we would find no way, literally no responsible way, I believe to take the $5.6 million that we have in here for the Bureau of Labor Statistics at the end of the summer.

If Congress were to go on record and say, "We're going to give it to you, you may go ahead and plan that you're going to get it," that's one situation. Knowing what I know about how Government operates and understanding the problems that the Senate and the House have to contend with, that until the appropriation is actually passed, you probably cannot give us a complete assurance.

In the case of dismantling statistical programs—and that's what we're talking about, dismantling some of the major data collection activities—that would be I believe disastrous, even if it were to happen on April 1. If it happened on July 1 or August 1 we would be in an extremely difficult situation, because the data that we present, that we provide to the public are essential to the monitoring of the recession.

IMPLEMENTATION OF POTENTIAL BLS REDUCTIONS

Senator RUDMAN. I understand that. I think we all understand that very clearly. And that is something that we wouldn't even anticipate happening.

Let me restate the question to you: Assuming, for whatever reason, that there was no action on this at this time. Just assume that for a moment; and in fact your own evaluation of the action of the House and the Senate was that any action at all would not occur until July on this specific request that we're talking about with you.

Would you please answer as specifically as you can at what point would you start dismantling any of these agencies; if in fact you had a hope for action in July, evaluated in whatever framework you wish to evaluate it in, but there was no action to be taken now. That's the question I'm trying to find an answer to.

Dr. NORWOOD. The only responsible action that I can take as manager of the Bureau of Labor Statistics is to begin action on April 1.

Senator RUDMAN. On April 1.

Dr. NORWOOD. Yes.

TYPE OF BLS REDUCTIONS

Senator RUDMAN. And what would that action be?

Dr. NORWOOD. That action would be, first, a review of the work that is done for us by the Census Bureau for the current population survey, for the consumer expenditure survey, which is the basis of the marketbasket and CPI—and the point of purchase survey, which is used for replenishment of our outlet sample for the CPI to see what could be cut back. That would mean suspension of all training, which would affect the quality of the data, and it would also mean suspending some data collection and delaying processing of data which has been collected.

That would not give us a great deal of money because it is so late in the year and it takes time to wind down. We would then go to the State agencies which are partners with us in the collection of data from establishments for the payroll survey, which provides us with industry employment data and with earnings data which are used to index perhaps $200 billion of Defense contracts and other private contracts, and try to cut out whatever we could there on contract funds. That would clearly affect the quality and I believe the availability of some of the data needed on industry employment.

We would then, after that—and I doubt that we could pick up a great deal of money there, but obviously we would try our best—we would then come back to the Bureau of Labor Statistics. We spend most of our money in personnel costs. We have about 28 to 30 percent of our budget that goes to the Census Bureau, and another portion goes to the State agencies.

We have cut back on everything that we possibly can. We have stopped travel, we have stopped purchases of equipment. We have few contracts; we've never had much in the way of contracts. We have cut back on computer use. We have cut back on all technical training, which disturbs me, but we have done it. We have taken every step anybody can. The only step left for us would be to furlough all of our employees. And depending upon how much we can pick up in the contracts area, which I believe would be a very small portion of this—and which would mean furloughing employees in other places—we would be just shutting down.

Senator RUDMAN. If I understand your answer, you would start reviewing the necessity of doing this some time around April 1.

Dr. NORWOOD. No; we have already reviewed this and have had some discussions with the Census Bureau. We would have to go into it in much greater detail.

Senator RUDMAN. Well, is it a fair conclusion, then, from your statement in response to the last question that if in fact this did not happen, there would in fact be furloughs, additional furloughs commencing on or about April 1, which is about 1½ months from now?

Dr. NORWOOD. Yes, sir; we would, of course, have to give our employees some notice, although we've already put our employees on notice that April 1 is the time that we would be making decisions, depending upon congressional action.

PROPOSED ETA YOUTH FUNDING DEFERRAL

Senator RUDMAN. We can turn now to unobligated youth funds. You are proposing not to use $6.5 million unspent fiscal 1981 Job Corps appropriations and $16 million in fiscal 1981 funds appropriated to youth employment training programs, despite the fact that these funds are available through fiscal year 1982.

With about 6 months left in the fiscal year, can you tell us why can't these funds be effectively used at this time?

Mr. ZUCK. Mr. Chairman, let me ask Mr. Komarek to respond to that.

Mr. KOMAREK. Mr. Chairman, in total we currently have no plans to use $47 million. We, in our 1983 request for the employment and training grants to States—which is the legislation which we are proposing to replace CETA—are requesting only about $2.4 billion in appropriations, versus the about $3.8 billion obligational level this year.

We have in place in the field plans to phase down operations to the lower operating level next year, and therefore at this point in time do not have plans in our current 1982 budget for the funds that you talked about or for any of the $47 million.

Senator RUDMAN. Just observing these numbers in your answer, I guess what you're saying is you're starting this phasedown in anticipation of certain action by the Congress. Is that an accurate statement?

Mr. KOMAREK. That's correct.

JUSTIFICATION OF PLANNED ETA PHASEDOWN

Senator RUDMAN. I wonder if that's really the right thing to do. Really, shouldn't you kind of live with the statutory situation as it exists so long as you are authorized to use funds, and isn't in fact that the law that exists in the prerequisites applicable to the statutes that you live by? Shouldn't you really be operating under those rather than assuming what we might do in starting a phasedown in anticipation of that?

Mr. KOMAREK. There are really two parts to that answer, Mr. Chairman.

Senator RUDMAN. There were probably three parts to the question, so——

Mr. KOMAREK. Yes, sir.

One of the problems we've had in CETA over time has been jumps in funding, and one of the things we are trying to do with this program is to provide as much advanced leadtime in planning as possible to avoid any misuse of the funds involved. So we are very concerned about having a well thought-out, planned operation at all times in the CETA program.

Second, I note that at this point in time, as our deferral message indicated, we have not made any plans for the $47 million. If programmatic or other necessity arose we would in fact come back and ask for another use for these funds.

Senator RUDMAN. Well, you know, the continuing resolution requires tightening Job Corps enrollees from 44,000 down to I believe 32,000. Couldn't you use some of this money to help alleviate the severity of that phasedown?

Mr. KOMAREK. You could use the money to alleviate that.

Senator RUDMAN. Why wouldn't you, since it's there?

Mr. KOMAREK. Well, because at this point in time, as I indicated, Mr. Chairman, we are attempting to develop a planned management action to phase down the Job Corps program from its current level to the level which will be requested in next year's budget.

ALTERNATIVE USE OF DEFERRED FUNDS

Senator RUDMAN. Well, just another fact here, that according to statistics that we've put out, we've got 42 percent unemployment amongst black youth. I don't understand any rationale to not use some funds because they are no longer needed in that kind of a situation. I mean, couldn't you use some of the funds in that area?

Mr. ZUCK. I think the important issue, Mr. Chairman, is that we are, as Mr. Komarek said, asking it as a deferral, not as a rescission. And as the process emerges in the development of the new successor legislation to CETA—as a matter of fact, the Secretary is testifying at a joint hearing this morning at the House and Senate on the legislation.

But as that legislative process develops over the course of the next couple of months we will certainly be looking to that $47 million, along with you, in terms of what may be some appropriate places to use that money once we have a better feel of exactly what that legislative and authorization level is going to provide.

Senator RUDMAN. Let me just respond in this way, Mr. Zuck: I understand your answer. I have a very clear understanding of what you're saying. I have a problem with some portions of it, and let me tell you why.

On the one hand we're talking about making sure we have enough funds to support this bureaucracy—and I don't use that in a pejorative way—to support the Department, making sure we have enough funds to keep people working and so forth so that Dr. Norwood can continue to give us bad news every month.

Dr. NORWOOD. Perhaps good.

Senator RUDMAN. Well, let's hope so.

In the meantime we are on the other side saying that we're not going to use some funds that we have to go out and help people who might need help. We're helping the people here who need help, mainly the people who work for the Department. We're using funds, these funds mainly, to support employment at the Labor Department. They are not program funds.

And I asked you some questions on program funds and you find reasons to take the program funds and hold them in abeyance to see what the Congress is going to do, which this year might be a lot and might not be very much.

So I just say to you on the record that I have some questions about that. And I imagine that the chairman of the subcommittee might have a bit more to say about it. But I really want to just point that out to you.

SOURCE OF PROPOSED TRANSFER FUNDS

Mr. ZUCK. The majority of the funds we're requesting, certainly in the transfers that are before you in these S. & E. program supplementals, are not coming out of unobligated funds that are available in Job Corps or elsewhere. Most of them are coming from the termination of the public service employment program——

Senator RUDMAN. I understand that.

Mr. ZUCK [continuing]. Which the administration and the Congress jointly agreed was a program that ought to be terminated. With regard to the $47 million, we're not proposing to use them for either pay raises or the program supplementals in the Department.

VETERANS' EMPLOYMENT SERVICE

Senator RUDMAN. Oh, I understand that. They're essentially all going to go to the same people. Well, we'll go on from there. The chairman may have some comments on this after looking at the hearing record.

We'll talk for a moment about the Veterans' Employment Service. You're requesting $1 million for that. What would be the impact if that's not appropriated at this time and when will that impact be felt?

Mr. ZUCK. You may recall, last year at this time the administration had proposed the elimination of secretarial positions to the State veterans' employment representatives. That was not approved by the Congress. However the President's budget never had funding for it, and when the revisions were made in September, when the continuing resolution was enacted, there was no provision for continuing funding of these positions in the Veterans' Employment Service.

So this request restores funds that would be required to support those positions, to follow both the House and the Senate directive we had in terms of not taking reductions in those areas. If we do not get the funds restored we would have to furlough VES employees.

WORK INCENTIVE PROGRAM SUPPLEMENTAL

Senator RUDMAN. Let's turn just for a moment to the work incentive program. Senator Dixon, as you probably know, has Senate Resolution 325, which supports an appropriation of $76.8 million supplemental for the work incentive program. He responded to the arguments on the program that by placing welfare recipients in jobs saves the Government money by reducing aid and associated other costs by approximately double.

Mr. ZUCK. Yes, I understand there is such a request pending. The administration does not support that request, the fundamental reason being that as a part of the budget proposal for 1983 it is proposed to terminate the WIN program as a separate program, and it would be encompassed within the block grant to State agencies under title XX. And so with the projected and proposed consolidation of that into a State grant program, it does not seem appropriate to be increasing funding at this point in time.

ESA WORKMEN'S COMPENSATION PROGRAM

Senator RUDMAN. Well, I expect we'll hear a great deal more about that. And I have more questions on that, but I will save them for another forum.

On ESA, we're talking about workmen's comp. Let's talk about that for just one moment.

Tell us the current backlog of workmen's compensation cases and how much it would grow in the absence of the, I believe it's—what?—$1,423,000?

Mr. ZUCK. Let me ask Mr. Collyer to respond to that, Mr. Chairman.

Mr. COLLYER. Mr. Chairman, in the Federal Employees' Compensation Act, we pay out roughly $1 billion a year in benefits. Absent this additional funding it would result in 15 days, 15 work-days lost to the program. That's 5.8 percent of the year.

You could apply that in a variety of ways. If we were forced to take all 15 days over a 3-week period, the rollover effect would be tremendous. It would take us a long, long time to catch up with the payments and the processing of these cases.

If, on the other hand, we were able to, say, starting in May distribute the furlough over 15 weeks, let's say 1 day a week, the impact would be less, but there would be people probably who would be overpaid. That would be, of course, money that we could recoup, we would hope, most of it anyway. There would be medical bills that would not be paid. This causes added work because of rebuilding correspondence, telephone calls. The overall effect in the FEC program would probably not be 15 days lost, it would probably be almost double that if we were to take it in one shot.

FUNDING FOR OLDER AMERICANS

Senator RUDMAN. All right. I'd like to move on now to a question that you may not have all the answers for here, or you may. If you don't, we would like a detailed answer for the record.

There is what appears to be a conflict between the Older Americans Act and the continuing resolution. Last fall the appropriations committee recommended a $207,800,000 reduction in community service employment for older American appropriations, eliminating the forward funding of the program but retaining the current level of 54,200 job opportunities.

This recommendation was not incorporated into the law under the continuing resolution. Subsequently, however, a 3-year extension of the Older Americans Act was amended, mandating use of appropriations to continue forward funding of the older worker program.

Does the Department have any legal ruling that the appropriations bill takes precedence over the authorizing statute leading the forward funding of the older worker projects?

Mr. ZUCK. I'm not aware of a legal position. I'd be happy to check that out and provide one for the committee. It is an issue that we're aware of, however. But I would be happy to get a legal interpretation from our solicitor.

Senator RUDMAN. We will give you a series of three questions on this for the record, and we would like responses at your earliest convenience. There are a number of people on the committee who have expressed concerns about this particular item.

Mr. ZUCK. I'd be happy to do that.

ESA'S SPECIAL TARGET ENFORCEMENT PROGRAM

Senator RUDMAN. I want to move on to an area that is of great interest to our subcommittee chairman. Had he been able to be here this morning I'm sure that he would have engaged in discussion on this with you, and that is the targeting enforcement activities on employers of illegal aliens.

Last fall the administration sent Congress a $6 million budget seeking to hire more Federal staff to conduct various raids on employers suspected of hiring illegal aliens. Congress never acted on the request. Yet it now appears that the Labor Department has proceeded under the continuing resolution to hire 143 enforcement staff for implementing the so-called special target enforcement program. It appears that the supplemental budget request for the Employment Standards Administration includes $1 million to continue operating this program through the balance of fiscal year 1982.

I wonder if you could tell us what authority you have to essentially unilaterally implement a program under the continuing resolution that was not contained in either the House or the Senate versions of the regular bill.

Mr. ZUCK. Let me ask Mr. Collyer to speak to that. But I'll just make one or two comments first.

One, we did not hire additional enforcement personnel. As a matter of fact, the enforcement personnel in the Employment Standards Administration has been decreased overall. It was merely a reshifting of the emphasis for the enforcement of the Fair Labor Standards Act to that group.

Senator RUDMAN. Well, I'm just asking that—I'm technically correct. I mean they were not "hired," but the funds allocated for their activities were switched into a new activity.

Mr. ZUCK. One could argue whether it is new or not. It is for enforcement of Fair Labor Standards Act, minimum wage, overtime provisions. It's just targeted in a sense toward a different group of workers, that's all.

Senator RUDMAN. I wonder if there's any reason why the committee through its staff was not at least notified as a matter of courtesy that this was going forward.

Mr. ZUCK. It was, as you indicated, included in the President's proposal, and in effect from our point of view, since the dollar level was authorized in the continuing resolution, we did proceed. However, it probably would have been better on our judgment had we notified the committee that in fact we were doing that.

DIFFERENCE BETWEEN STEP AND UNDOCUMENTED WORKER PROGRAM

Senator RUDMAN. Would you tell us how this program differs from the Carter administration's undocumented work program which GAO said was in effect?

Mr. COLLYER. Yes, Mr. Chairman.

Senator RUDMAN. Tell us how it differs from that, please.

Mr. COLLYER. Yes; the GAO report was done about 3 months into that particular program. The thing wasn't really off the ground during the Carter administration. It continued to get better.

This program is somewhat different. We're targeting enforcement efforts under the Fair Labor Standards Act into metropolitan areas where there are pockets, we suspect, of illegal aliens. Certainly New York City, Los Angeles, south Florida, Dade County, somewhat in Chicago. And it's our effort to work with the INS in going after those industries which we feel house great numbers of illegal aliens. The garment industry is one we would target; the hotel industry, the restaurant industry, the farm labor industry, migrant workers, we suspect there's a number of illegal aliens there.

However, they'll be picked up through the Farm Labor Contractor Registration Act, a separate enforcement activity of the Wage-Hour Division.

[CLERK'S NOTE.—The following additional clarifying statement was submitted by the Department:]

The main difference between this program and the Carter administration's undocumented program is the closer coordination with INS and improved targeting of investigations under this program. We believe the STEP program will be more effective in targeting geographic areas and industries and specific employers who use undocumented workers.

The Department of Labor agreed in many respects with the recommendations in the GAO report regarding the former EUW program at the time the GAO review was conducted. The GAO review was undertaken during the first 3 months of the EUW program, and many of the criticisms were typical of the problems in large measure were subsequently addressed and resolved. For example, the GAO report recommended closer coordination between INS and Labor. This was recognized by Labor early on and steps were taken to improve coordination. To help generate investigation leads a program was set up to permit wage and hour compliance officers to visit INS detention centers and interview aliens prior to deportation regarding their wages and working conditions while employed in the United States. In addition, INS provided specific leads based upon their experience with employers. Wage and hour also provided leads to INS where it appeared that illegal aliens were employed.

The report also commented on instances when wages due unlocated undocumented workers were retained by the employers. We have now undertaken steps to change this by using Mexican consultants to help locate Mexican Nationals who have returned to Mexico. The Government of Mexico is very positive about this program.

One issue which remains unresolved was GAO's recommendations that wage and hour compliance officers question workers as to their nationality and authorization to work in the United States. GAO believed this was necessary in order to assess the impact of the program and make valid referrals to INS. It is the Department's view that there is no authority under the Fair Labor Standards Act to inquire into a worker's status. We do have such authority under the Farm Labor Contractor Registration Act and do make inquiries in these investigations.

OSHA STATE PROGRAM FUNDING INCREASE

Senator RUDMAN. We'll move on for a moment, if we can, to OSHA State programs. You're proposing to shift the $3.8 million into OSHA's State programs, keeping inspections at the fiscal year 1982 levels.

Is it fair to have a reduction in those States that have Federal enforcement, substantial reductions, and yet keep the State inspections at the same level? What's the sense of that?

Mr. ZUCK. Let me ask Mr. Zeigler of the Occupational Safety and Health Administration to respond to that.

Mr. ZEIGLER. It's fair to point out, Mr. Chairman, that the States had previously not gotten increases for the last 3 years in total when the Federal level was going up. So essentially the funding of the States this time around really does nothing more than put them in balance with the Federal program in our judgment.

Senator RUDMAN. And thereafter we assume it will be at approximately the same level?

Mr. ZEIGLER. Right.

PROPOSAL FOR OSHA STATE PLAN APPROVAL

Senator RUDMAN. You're proposing bill language to permit approval of State OSHA plans to provide administrative enforcement staffing levels equivalent to Federal levels. How do the States feel about this proposed change?

Mr. ZEIGLER. They are very much in favor of it, sir.

Senator RUDMAN. Can you tell us who supports it and which groups oppose it?

Mr. ZEIGLER. Essentially the language attempts to make explicit what we feel the Congress has already indicated through the appropriation process during the past several years—the State plan staffing need not be higher than equivalent Federal staffing.

In our judgment this is sufficient staffing. Others have somewhat different views on this. Some folks are of the belief that States must provide a more comprehensive program in order to be fully effective; that is, the top of the line. We disagree.

MSHA RESCISSION PROPOSAL

Senator RUDMAN. I'll move on briefly to mine safety. In that request the administration proposes rescission of $4 million from Mine Safety and Health Administration down to $2 million.

As you indicated in your opening statement, the purpose of this change was to permit the hiring of additional inspectors relating to the coal activities. I wonder if this doesn't really constitute somewhat of an illegal reprograming of funds from sand and gravel activities to coal enforcement activities, and bypassing what would be a traditional process of getting appropriations for the approval.

Do you consider this to be well within the powers of your statute?

Mr. ZUCK. In a sense, Mr. Chairman, as you know, we've been operating under a continuing resolution and have not had an enacted appropriation which normally provides the funding levels by budget activity or appropriation activity.

The fact that we have before the committee in effect the President's rescission and the modification of the original rescission, which was $4 million reduced to $2 million, so as to provide for the additional $2 million to go into coal mine inspection, we believe provides the information to the committee to in effect give us the authority to move in that direction.

Senator RUDMAN. Wouldn't it have been, in terms of budgetary procedure, probably more precise to have a rescission request of $4 million for sand and gravel activities and a supplemental of $2 million to hire the additional coal inspectors? I mean isn't that essentially the effect of what you're doing?

Mr. ZUCK. I think that is—perhaps it's more technically correct, but it involves two different transactions, whereas this way we can dent it out to one transaction.

Senator RUDMAN. Also I'm sure it is a lot more politically a red flag. I'm just wondering why this wasn't done a long time ago. We're rather precise around here with these requests. It seems that this one was done in a somewhat different manner.

Mr. ZUCK. If we had a rescission of the $4 million and did not have a simultaneous restoration of $2 million for coal inspections, if they were on a different track we would end up with actually a $4 million rescission, which would force us into a posture of having to, in effect, reduce staff more substantially than it would be to do the net effect.

Senator RUDMAN. I think that's correct, I think that would be the effect. But that does not necessarily mean that that was not the right way to do it. I was just questioning that.

Just to get your thinking on one item with mine safety, an additional one, why shouldn't we simply transfer $2,095,000 from the Mine Safety and Health Administration to OSHA in order to cover the transfer of sand and gravel inspection workers?

Mr. ZUCK. Well, there are some problems with doing that. With some of the limitations that are in the OSHA appropriation language at the moment—the exclusion of coverage for employers of 10 or fewer—the effect is that by the language that was put in the MSHA act, the MSHA appropriation language in the continuing resolution, and along with the language that is in the OSHA appropriation language, we, in effect, have many of these sand and gravel operations not covered with either, so that it does not translate into additional workload for the Occupational Safety and Health Administration.

Senator RUDMAN. Well, I wonder if you would look at that and give us a more precise answer—not that your answer wasn't precise—an answer that is amplified somewhat as to why that would not be procedurally correct.

Mr. ZUCK. Sure.

[The information follows:]

TRANSFER $2,095,000 FROM MSHA TO OSHA

The administration does not support the transfer of responsbility for sand and gravel operations from MSHA to OSHA because of our concern for safety and health of the miners in those industries. Currently, OSHA is limited in its ability to conduct general schedule safety inspections at the affected operations because of an amendment in its appropriations which prohibits general schedule safety inspections in standard industrial classifications with 10 or fewer workers and a better-than-average lost work-day injury record. We estimate 86 percent of the sand and gravel mines and 66 percent of the surface mines are exempted from OSHA's general schedule safety inspections because of this restriction.

No positions were transferred to OSHA for sand and gravel operations. Therefore, it would not appear procedurally correct to transfer the $2,095,000 to OSHA to support unfilled positions and for inspections they are unlikely to conduct.

IMPACT OF PREVIOUS BLS FUNDING REDUCTION

Senator RUDMAN. I want to go back to the BLS for just a moment. During last year's hearings on fiscal year 1982 appropriations Commissioner Norwood was saying let's identify how the BLS could take a 3-percent cut in its budget. Subsequently the administration proposed a 12-percent cutback, which I believe the House supports.

I want to know how we can be sure you can't live with the additional 4-percent cut proposed by the continuing resolution when you were able to adjust to cuts much deeper than you thought possible a year ago.

Dr. NORWOOD. My recollection, Mr. Chairman, of my statement of a year ago was that it would be extremely difficult and that we would have to eliminate programs that were of great importance. We have done that.

We have, with the 12-percent cut which we are in the process of putting into effect, and either eliminated entirely or cut back considerably some 19 programs.

One of our problems is that a great deal of the BLS program is either a part of the major core of economic intelligence required in order to evaluate policies for the economy or is required by law. For example, one of the programs we reduced is strike statistics. Unfortunately the Labor-Management Relations Act of 1974, as amended, requires the publication of data on strike statistics.

And so what we have done is to cut this back considerably, more, by the way, than any other industrialized country in the world. But we will be publishing data only on large strikes to comply with the law.

We have consulted with the solicitor and we have made certain that each of the reductions and eliminations that we have taken are consistent with the requirements of law. We have attempted to preserve, to the extent that we could, the quality of the basic data on employment, unemployment, prices, wages, and productivity, which we believe, I believe very strongly, are required.

We have cut back, for example, on some of the sampling in the Consumer Price Index for urban wage and clerical workers, CPI–W. We have reduced the extra sampling for the wage earner index so that we will be using the same set of prices for both indexes: the CPI–U and CPI–W. We will be eliminating the index for Fairbanks, Alaska, which was added at the request of the Congress. But the inflationary situation in Alaska we believe has abated. We are eliminating a number of wage surveys.

And, in fact, I've been spending a great deal of my time before the Congress of the United States explaining why we are eliminating these programs. I believe that we are doing this in an orderly way. All of these programs have users, but I think the important responsibility that I carry is to be certain that the basic data needed in order to monitor this economy are retained and are of sufficient quality.

NEED FOR BLS REGIONAL OFFICES

Senator RUDMAN. Now just one question which comes to mind—and I'm sure there's a good answer for it. But since you're dealing essentially with statistics, numbers which are reported in a variety of ways, with the vast improvements in communications today, why so many regional offices?

Dr. NORWOOD. Mr. Chairman, the Bureau of Labor Statistics has fewer regional offices than any other agency in the Department of Labor. The San Francisco office covers the entire western region and our Kansas City office covers the Denver region as well. We have data collection which occurs out of each of our regional offices. We find it saves travel costs to have people in the various areas. But we do not have as many regional offices as other parts of the U.S. Government.

Senator RUDMAN. Well, I'm sure that's true. And that's not a very good answer, Dr. Norwood. Obviously the FAA needs a lot more regional offices than you do.

I think my question simply was—and I don't think you've answered it—why cannot information from the west be transmitted to your headquarters here in Washington as efficiently as it could be to your regional office in San Francisco, or do you actually take part in going out in the field and getting data?

Dr. NORWOOD. Well, we——

Senator RUDMAN. I didn't think you did.

Dr. NORWOOD. Yes, we do.

Senator RUDMAN. Oh, you do.

Dr. NORWOOD. Our data are transmitted frequently directly by computer from a regional office or sometimes we get tapes from companies. But we do a great deal of personal visit collection because some of the work that we do is extremely technical, is quite sophisticated, and we have to observe records.

We have increased telephone data collection to the extent that it is feasible. In fact, I'm worried about that. I think we need to do more testing to be certain that we are not going too far in that direction, and that's a problem for the whole statistical system, as a matter of fact.

We have found ways to cut back travel costs. If we had to send everyone from Washington our travel costs would be enormous. We have data collectors, for example, for the Consumer Price Index who—we collect data in 85 areas—live in the cities where they collect data. There are part-time data collectors, but they have to be supervised from time to time. We have quality control programs which require somebody from BLS to go out to check on what is happening, which can much more efficiently be done in regional offices.

And, as I've said, we have found that the best structure for us is eight regional offices. Each regional office is really extremely small. We have cut back enormously on the servicing of requests for information in the regions, and that too is something of a problem. But we seem to be coping with that.

In addition we have the best developed Federal-State cooperative system in the whole statistical system in which the States cooperate with us so we don't have the Federal Government going out and collecting the same data as the States. That requires constant contact with the States in each of the regions.

ADAPTABILITY OF AUTOMATION TO DATA COLLECTION

Senator **RUDMAN**. Well, I think my point would simply be that we are evolving into a society where if there's anything that can be done effectively in an automated fashion it's data collection.

At some point I would expect that you will have less need for some of your field activities than you do in 1982 or 1983. Maybe we're talking 10 years. But this data is collected by other people in many forums which are mechanically transmittable, essentially untouched by human hands.

Dr. **NORWOOD**. Yes, sir.

Senator **RUDMAN**. And certainly with the unemployment information, with much of the price information, as I understand the way my State transmits it and so forth, I just question how long we will need regional offices for all these agencies.

Dr. **NORWOOD**. I should point out that we do have an extremely effective systems staff and that we have been moving in that direction. Unfortunately it takes resources sometimes to do those things, and that's a whole different question.

SUBMITTED QUESTIONS

Senator **RUDMAN**. Well, we do have additional questions for the record to be answered in writing at the time you return your testimony and the corrected hearing transcript.

And the additional public witness testimony, of course, sponsored by the Labor Department supplemental appropriations will also be included in the record at this point.

Thank you very much for appearing here this morning.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

ETA INCREASE OVER FALL BUDGET REQUEST

Question: Your $8.7 million supplemental request for Federal administrative costs of the Employment and Training Administration would raise the fiscal 1982 funding to $119.4 million. This is $6.7 million above the President's September budget request level. What is the rationale for requesting an increase over the President's September budget request level, instead of merely restoring the $2 million continuing resolution cutback below last Fall's request?

Answer: A combination of factors are involved: (1) The September budget request assumed a RIF of approximately 500 people. ETA's final RIF was 412 since ETA was required to restore VES proposed reductions and limit the BAT reduction. (2) The costs related to the RIF are currently projected to be greater than originally projected and the savings less. Specifically, unemployment compensation was higher and the salary savings was less due to employees retreating and bumping.

Question: What would be the impact of providing a $5.6 million supplemental, to bring funding to the level recommended by the Senate Appropriations Committee in the regular bill last November?

Answer: A supplemental of only $5.6 million would result in approximately 10-12 days of furlough for all ETA employees. There would be delays in allocations and payments to State and local grantees. Backlogs would also appear, creating greater workloads, and the continuity of program operations would still be interrupted.

RATIONALE FOR BLS $1.3 MILLION INCREASE

Question: What is the rationale for requesting a $1.3 million increase for the Bureau of Labor Statistics over the President's September budget request?

Answer: The $1.3 million increase over the President's September budget request is needed to maintain approved BLS staff levels for FY 1982 and is consistent with the President's budget request for FY 1983.

ESA INCREASE OVER FALL BUDGET REQUEST

Question: Likewise, why is the Employment Standards Administration request $497 thousand over the President's September Budget level?

Answer: The recent Reduction-In-Force (RIF) has necessitated that employees in ESA be separated, reduced in grade and/or transferred to geographical locations where there are available positions which they can fill. Separation and PCS moves entitle employees to be compensated with severance pay, payment for unused leave, unemployment compensation and to be reimbursed for the expenses incident to PCS moves.

ESA estimates that the total costs related to the RIF is $1,980,000. Through careful fiscal management, the agency anticipates ability to accomodate $1,483,000 of this amount under the existing budget level. The request for the additional $497,000 will allow the agency to pay for the remaining obligations related to unemployment compensation and severance pay.

EXPERIENCE IN SOLICITOR'S OFFICE WITH FURLOUGHS

Question: We understand layoffs have been avoided in the Solicitor's Office, because enough money has been saved by employees volunteering to be put on furlough. How many employees have accepted furloughs, for what average length of time?

Answer: 406 Office of the Solicitor employees (out of a total employment of 819 at the beginning of FY 1982) volunteered for leave without pay averaging 10 days.

Question: Did you find that most of those volunteering for furloughs were at higher salary levels?

Answer: Employees who volunteered for leave without pay were divided into the following categories:

Attorneys (GS 9-SES) - 324

Other Professionals (GS 9-15) - 19

Clericals (GS 2-8) - 63

Question: Have you considered "voluntary" furlough procedures in other components of the Labor Department?

Answer: Other Departmental agencies have considered use of voluntary furlough. However, for the three agencies which would implement furloughs in lieu of enactment of supplemental appropriations, the need would be too severe for the voluntary approach to be practical. Reductions would have to occur throughout those agencies in order to produce the level of savings required to offset the lack of additional funding.

Question: Have you considered letting employees take their entire furlough at one time, as an unpaid vacation?

Answer: Current plans do not include an "unpaid vacation" approach to furloughs. Agencies prefer a more orderly or controlled implementation in order to minimize the negative impact of furloughs on program operations.

RIGHTS OF FURLOUGHED EMPLOYEES

Question: Are furloughed employees entitled to unemployment compensation, retirement benefits, and annual and sick leave for the period of time they are off the Federal payroll?

Answer: Furloughed employees are entitled to unemployment compensation, and retirement enrollment continues but employee contributions are not required for non-pay periods. Furloughed employees earn no annual leave for every multiple of 80 hours in non-pay status. Sick leave is not earned for every multiple of 80 hours in non-pay status, and an Agency could prohibit use of accumulated sick leave if the reason for furlough is lack of funds.

Question: What is the maximum length of time Federal employees can be furloughed?

Answer: The maximum length of time Federal employees can be furloughed is one year.

Question: Would all employees be furloughed an equal length of time, or would some be exempt?

Answer: In general, all employees would be furloughed for the same length of time. There may be circumstances where selected employees would be exempt in order to complete special or critical assignments.

Question: Would "schedule C" political appointees also be furloughed?

Answer: Schedule C employees could be furloughed, but it would depend on individual agency plans and the degree to which programs were specifically affected by a furlough.

Question: How much advance notice must be given to employees you intend to furlough?

Answer: Employees to be furloughed must receive the following advance notice:

-- 30 days notice of furloughs for 30 consecutive days or less;

-- 30 days notice of furloughs for up to 22 non-consecutive days; and

-- 60 days notice of furloughs for more than 30 consecutive days, or more than 22 non-consecutive days and the notice must follow Reduction-in-Force procedures.

In the event of an emergency, e.g., funding interruption, furloughs do not require an advance notice period.

IMPACT OF FURLOUGHS

Question: If Congress does not approve your supplemental requests, when would furloughs have to begin in each of the affected agencies?

Answer: The actual date may vary by agency, depending on personnel compensation needs and the estimated number of furlough days. In addition, advance notice is required for employees to be furloughed (except under emergency conditions) which affects the actual date such actions become effective. Given these factors, furloughs may be expected to begin any time after May 1, 1982.

Question: What average number of days would employees be furloughed in each agency?

Answer: Three agencies would consider furloughs if their program supplemental requests were not approved. Each agency's estimated number of furlough days follows below.

Employment and Training Administration.........	27 days
Employment Standards Administration............	15 days
Bureau of Labor Statistics.....................	14 days

Question: How would the furloughs be staggered, so as to minimize disruption of work?

Answer: The agencies are now considering the alternatives available for implementing a furlough schedule. Where a significant number of days are involved, such as in ETA, there is less flexibility because of the time remaining in the fiscal year in which to take the furloughs. Alternating furlough days is one possibility, but it may not be practical for an agency such as BLS whose organizational structure is based on function. In addition, consideration must be given to staff to minimize the adverse effect on income.

Question: What would be the impact of the furloughs in each agency with respect to carrying out critical work?

Answer: In ETA, there would be a significant disruption in grant administration activities. This interruption would in turn have an impact on State and local grantee operations because federal staff would not be available to allocate funds and make the necessary payments to ensure continuous program operations. Federal oversight of grantee financial management would be interrupted just when most needed to monitor end-of-year spending levels.

In ESA, the impact would be most severe in processing new FECA and longshore claims. Since the agency would have to concentrate on current caseload and the maintenance and benefit payment functions, new claims processing would virtually cease, particularly for those related to federal employees. In addition, wage-hour activities would be severely interrupted, resulting in additional backlog of 2,500 complaints and a loss of $5 million in underpayments that would otherwise be restored to between 500 and 1,000 workers found during STEP investigations. Wage determinations would be delayed and implementation of the Wage and Hour Management Information System would be interrupted during the critical phase of pilot testing.

In BLS, monthly production and release dates for the major BLS indicators, such as the Consumer Price Index and the unemployment rate, would be delayed. Since these programs are supported by sample designs and processing activities which occur throughout the month, deterioration in the quality of the data will also occur.

Question: Do you have any estimate of the impact of furloughs on staff morale and the quality of work performance?

Answer: With no previous experience to provide a perspective, there is no precise estimate of a furlough's effects. It is safe to assume, however, a negative impact on morale, particularly for those employees whose financial condition would become a serious problem with a salary loss.

Likewise, the subsequent effects on the quality of work performance are difficult to assess, but, again, there might be some negative impact due to the uncertainty of work schedules and loss of work days. Program managers are aware of the potential problem and are being asked to pay special attention to it in order to prevent or minimize a decline in work performance.

Question: To what extent do inefficient, indifferent staff attitudes impact on the level of fraud, waste, and abuse in programs monitored by Federal staff?

Answer: If a decline in employee morale leads to inefficient or indifferent staff attitudes, opportunities for fraud, waste and abuse could increase. However, without prior experience as a measuring device, it is difficult to make such assumptions. The Department continues to work on minimizing fraud, waste, and abuse in its grant programs and is sensitive to the need for maintaining high quality performance in its monitoring responsibilities.

Question: To what extent is there a danger that furloughs, resulting in backlogs of work, will lead to sloppy processing of work that could be more costly in the long run?

Answer: If there is a significant disruption in operations, there is a risk that workload accomplishments may decline in quality. The Department has no intention of reducing standards and will do what it can to minimize such an effect.

In activities such as benefits claims processing, production is integral to keeping backlogs at manageable levels. When backlogs grow, however, there is an increase in inquiries on the status of claims, which must be answered. Frequently, duplicate provider bills are received, when the first ones are not paid, which must be processed. However, no intentional shortcuts or improper procedures will be implemented to reduce backlogs.

Question: The press recently reported that District of Columbia officials, faced with a mounting backlog of applicants for unemployment benefits, ordered all claims to be paid without the usual verification procedures. Are there other Labor Department programs where the pressure to take shortcuts to reduce backlogs could be costly?

Answer: In the Department's entitlement programs, backlogs could result in pressure to process and adjudicate claims for benefits at the expense of established verification procedures. The Department will attempt to act on claims in a timely manner if furloughs take place, but it will not deliberately sacrifice accuracy for speed.

ELIMINATING NEWSPAPER SUBSCRIPTIONS

Question: Secretary Donovan recently announced cancellation of $400,000 worth of newspaper and magazine subscriptions. Specifically, from which agencies are these savings being realized?

Answer: Subscription cost savings by agency are:

Employment and Training Administration	$ 59,865
Labor-Management Services Administration	36,604
Employment Standards Administration	13,251
Occupational Safety and Health Administration	213,480
Mine Safety and Health Administration	10,000
Bureau of Labor Statistics	9,957
Departmental Management	48,027
Total	$391,184

Question: Can we reduce your supplemental requests by the amount of these savings?

Answer: In determining our supplemental requests, all cost savings, including savings from subscriptions were considered. Therefore, supplemental requests should not be reduced by this amount.

VETERANS EMPLOYMENT SERVICE

Question: You are requesting $1 million for the Veterans Employment Service. What will be the impact if this money is not appropriated?

Answer: VES would be unable to fill 20 currently vacant legislatively mandated field staff positions. A furlough of 30 days would have to be taken by all VES staff sometime during the last five months of the fiscal year. All activities would be curtailed and in particular, 50 percent fewer outreach and public information visits would be made; 29 percent fewer local job service offices would be evaluated as required by law; onsite monitoring, technical assistance and follow-up training for deficient staff would be reduced by one-third and special monitoring would be reduced by 67 percent.

Question: Why is this money requested as general revenues, when historically the Veterans Employment Service has been financed by trust funds?

Answer: All ETA's program supplemental has been put into general revenue funding. It is true that, historically, the Veterans Employment Service has been financed by trust funds. However, there is nothing in the legislation that precludes general funds from being expended in those areas historically associated with trust funds. For the sake of not complicating the supplemental request, all funding was incorporated under general funds because ETA is requesting unobligated Employment and Training Assistance funds. There is therefore no additional budget authority request of the Congress.

Question: What is the status of the proposed transfer of the Veterans Employment Service to the Secretary's office?

Answer: In the 1983 Budget, the Veterans Employment Service is comparatively transferred from ETA to Departmental Management and has become an Assistant Secretary's Office.

REORGANIZATION OF APPRENTICESHIP SERVICE

Question: Reportedly, you are considering a reorganization to abolish the Bureau of Apprenticeship and Training as a separate administrative unit. To what extent do you plan to reduce the current staffing level of 332 positions working on apprenticeship activities? How would the supplemental of $1,130,000 being requested for the Bureau of Apprenticeship and Training be used if the Bureau is reorganized out of existence?

Answer: ETA plans no reductions in the current level of 332 budgeted positions for BAT.

ETA is considering various reorganization proposals however, BAT will not be eliminated and will remain as an identifiable organization.

Question: To what extent would the lack of the Employment and Training Administration supplemental impair fraud and abuse investigation activities? Would investigative activities be curtailed in any other agencies of the Labor Department?

Answer: ETA's investigation activities of fraud and abuse would be severely impacted by not receiving this supplemental. The furloughs entail 27-30 days per employee. In addition to this, if a pay supplemental is not approved, an additional 16 days would be added, requiring approximately two days furlough per week for five months. The work on eliminating fraud and abuse would be reduced by a minimum of 40 percent. Monitoring would be lost. Pressures to reduce restrictions and activities would become accute. Backlogs would be created and some investigations never done.

WORK INCENTIVE PROGRAM

Senator Dixon has introduced Senate Resolution 325, which has been referred to the Appropriations Committee, seeking a $76.8 million supplemental for the Work Incentive Program.

Question: How do you respond to his argument that this program, by placing welfare recipients in jobs, saves the government money, by reducing AFDC payments more than double what it costs?

Answer: Initial monthly welfare grant reductions are reported in ETA's management information system. In order to produce a yearly savings level, the monthly figures are annualized by multiplying by 12, and deflated by a factor for retention in employment over 30 days. Proponents of WIN's ability to save $2 for every $1 spent argue that this welfare savings is understated since WIN takes no credit for program applicants who are found jobs before program emersion, or for more than one year's welfare grant savings. Critics of the welfare savings analysis argue that many persons for whom WIN claims welfare grant reductions would have eventually found jobs on their own, and that employment over 30 days is not necessarily a job which will last a year and result in a year's worth of welfare grant savings.

Question: Can't job training services to welfare clients be provided just as effectively and possibly more efficiently, by utilizing regular Employment Service staff and CETA funding?

Answer: A combination of a Community Work Experience Program (CWEP), the social services block grant, and the proposed new employment and training block grant, along with the services available from the Job Service activities, will give States the tools with which to assist welfare recipients to reduce barriers to employment and to increase their employment opportunities.

Question: Isn't it sometimes difficult to identify local "WIN" offices, since "WIN" staff are frequently consolidated with regular local Employment Service staff?

Answer: No, it is not difficult because in the 1979 directory, there were listed 374 separate WIN local offices and 790 offices that are combined with Job Service offices, with each staff performing those activities authorized by their program funding source.

Question: What percent of WIN training money is actually subcontracted to local CETA project sponsors?

Answer: WIN has never required the States to provide this information in our reporting system. Due to the limited amount of WIN work and training funds, several years ago we developed a policy encouraging maximum use of any resources and skills available through CETA and outher sources of training available. In fiscal 1981, WIN funded a total of 19,833 institutional training slots. We believe a relatively small number of these were subcontracted to CETA project sponsors.

In addition, WIN does refer registrants to CETA and other training which is avialable at no cost to WIN. Such training in addition to CETA, includes local public training institutions, skill training facilities, etc. In fiscal 1981, more than 77,000 WIN registrants participated in these activities.

Question: How do the services provided under the Work Incentive Program differ from services provided through the Comprehensive Employment and Training Act?

Answer: Both provide for similar kinds of employment and training services. However, the WIN program contains a work requirement, including adjudication and related activities, which is not provided for in CETA.

Question: How do the population groups differ in these two programs?

Answer: WIN serves only a welfare population. CETA has been serving the economically disadvantaged. Of the WIN registrants, three-fourths are women, and over half have not graduated from high school. On the other hand, about one-fourth of CETA participants are on welfare and over half have at least a high school diploma.

WORKFARE

Question: What is the Department of Labor's role in the new workfare programs authorized for Aid to Families with Dependent Children recipients by the Reconciliation Act?

Answer: The Community Work Experience Program (CWEP) and the Work Supplementation Program (WSP) are administered by the Office of Family Assistance in the Social Security Administration, HHS.

The Department of Labor would continue to provide employment and training services to welfare recipients under the new proposed employment and training block grant, as well as through the Job Service.

Question: What has been learned through the WIN program that might be useful in future debates concerning workfare?

Answer: The WIN program has demonstrated the validity of a work requirement, and the effectiveness of structured job search, employment and training services, and appropriate social support services in promoting economic self-sufficiency for welfare recipients through unsubsidized private sector employment.

Since 1972, WIN has, under its legislation, placed welfare clients in work experience slots. Although such work experience is unpaid, participants received their AFDC grant plus transportation costs and $30 a month incentive, child care and other necessary social services. Work experience is limited to 13 weeks, but is structured to provide a clearly defined, well supervised assignment with a private non-profit or public employer. The client has the opportunity to develop basic work habits, to acquire job skills and to demonstrate these skills to a prospective employer.

SUPPORTIVE SERVICES

Question: What has been learned during the years of administering WIN about the importance of supportive services such as Day Care?

Answer: The WIN program has demonstrated that supportive services such as day care are essential in order to assist welfare recipients, many of whom are single parents with children, to become self-sufficient. A recent research study on the institutional analysis of WIN found that these support services are required in order that clients participate and gain the job skills needed.

Question: What effect will reductions in these services, through budget cuts in WIN and Title XX of the Social Security Act, have on people's ability and incentive to work?

Answer: While the level of federal payments for social programs will be less, we are confident that States will use available resources where the return on investment will be greatest in placing people into jobs and reducing welfare costs.

WIN DEMONSTRATION PROGRAM

Question: What is the legal status of the 1981 Reconciliation Act provision which indicates States electing to operate newly-authorized WIN Demonstration programs would not receive budget cuts?

Answer: The Omnibus Budget Reconciliation Act of 1981 constitutes a budget authorization not an appropriation. Funding for both the regular WIN program and the WIN Demonstration Program is subject to congressional action. Both regular WIN and the WIN Demonstration Program share in any reduction in the WIN appropriation, which is the source of funds for both.

Question: Which States have elected to operate such a demonstration program?

Answer: Initially, within the legally specified application period, 26 States submitted proposals to operate a WIN Demonstration Program. Subsequently, 6 States have withdrawn and the 20 States remaining are:

- Arizona
- Arkansas
- Delaware
- Florida
- Illinois
- Maine
- Maryland
- Massachusetts
- Michigan
- Nebraska
- New Jersey
- Oklahoma
- Oregon
- Pennsylvania
- Rhode Island
- South Dakota
- Texas
- Vermont
- Virginia
- West Virginia

STAFF

Question: Provide for the record a State-by-State list of WIN staff, for fiscal 1981, compared to the fiscal 1982 continuing resolution level. Indicate a break-out of staff assigned to Job Service offices, as well as State welfare offices.

Answer: Table 1 provides a State-by-State listing of WIN staff, including separate break-outs for Job Service staff (ETU) and welfare staff (SAU), for fiscal 1981 and the first quarter of fiscal 1982. The one-third reduction effects on staffing are not reflected in the first quarter figures. Since that reduction occurred on December 15, staff cuts were not made until the second quarter. This information will not be reported by the States until May or June. Preliminary indications are that staffing reductions will be at least one-third of the 1981 authorized level.

Question: How would a $76 million fiscal 1982 WIN supplemental be divided by State and how many staff would it provide?

Answer: It is not appropriate for the Department to supply information in support of efforts to raise appropriations above the amounts requested by the President. The Department's responsibilities and perspectives are limited to a few programs, whereas the President must weigh carefully all the needs of the Federal government, and compare them against each other and against the revenues available to meet such needs.

Question: How many separate WIN units are there in local Job Service offices and how many WIN staff are simply integrated with regular local Employment Service staff?

Answer: In 1979, which is the year the last survey was made, there were 374 separate WIN local offices and 790 offices that are combined with Job Services offices, but with staffs that were separately identified.

Question: What has been the impact on State Employment agencies due to continuing resolution cutbacks of the Work Incentive Program?

Answer: In fiscal 1981, over 8,000 State Employment Security Agency staff were working in WIN-funded activities. Data re not yet available on the magnitude of the staff reduction attributable to the one-third funding reduction under the lates continuing resolution. Since it was passed on December 15, staff cuts were generally not made until the second quarter, and will not be reported until May or June. Preliminary indications are that staffing reductions will be at least one-third of the 1981 authorized level.

EMPLOYMENT SERVICE

Question: How many States have shifted administration of this program to agencies other than the Employment Service, based on changes authorized by the 1981 Reconciliation Act?

Answer: Two States have begun WIN Demonstration Program operations, and 18 others are planning implementation before the end of the fiscal year.

Table 1

Total Staff (person years paid)
for
ETU and SAU
Fiscal Year 1981 and 1982

	FY 1981			First Quarter FY 1982		
State	Total Staff	ETU Staff	SAU Staff	Total Staff	ETU Staff	SAU Staff
Alabama	116	79	37	112	75	37
Alaska	24	15	9	23	13	10
Arizona	94	66	28	78	51	27
Arkansas	99	74	25	105	63	42
California	1,370	1,031	339	1,220	878	342
Colorado	158	113	45	146	101	45
Connecticut	181	121	60	161	101	60
Delaware	43	31	12	40	30	10
Dist. of Col.	112	75	37	99	62	37
Florida	226	141	85	221	136	85
Georgia	245	180	65	205	140	65*
Guam	33	7	26	33	7	26*
Hawaii	61	45	16	62	47	15
Idaho	87	61	26	85	58	27
Illinois	587	424	163	549	415	134
Indiana	165	113	52	146	94	52
Iowa	123	67	56	115	59	56
Kansas	130	74	56	106	78	28
Kentucky	166	112	54	148	99	49
Louisiana	136	74	62	117	70	47
Maine	81	58	23	83	59	24
Maryland	288	205	83	264	181	83
Massachusetts	460	327	133	434	301	133
Michigan	615	467	148	512	364	148
Minnesota	213	146	67	188	154	34
Mississippi	143	80	63	123	65	58
Missouri	271	160	111	243	148	95
Montana	43	33	10	43	27	16
Nebraska	51	31	20	48	30	18
Nevada	26	21	5	26	21	5*
New Hampshire	36	17	19	33	17	16
New Jersey	401	263	138	374	253	121
New Mexico	69	49	20	65	45	20
New York	874	655	219	800	579	221
North Carolina	219	111	108	198	120	78
North Dakota	36	22	14	26	15	11
Ohio	692	450	242	669	432	237
Oklahoma	73	52	21	46	40	6
Oregon	243	193	50	234	186	48
Pennsylvania	483	353	130	504	388	116
Puerto Rico	195	60	135	190	55	135*
Rhode Island	89	48	41	84	41	43
South Carolina	171	88	83	166	83	83*
South Dakota	43	27	16	34	22	12
Tennessee	146	114	32	165	121	44*
Texas	321	201	120	293	175	118
Utah	108	65	43	90	51	39

	FY 1981			First Quarter FY 1982		
	Total Staff	ETU Staff	SAU Staff	Total Staff	ETU Staff	SAU Staff
Vermont	113	74	39	115	76	39
Virginia	246	170	76	247	151	96
Virgin Islands	13	7	6	14	8	6*
Washington	359	257	102	380	258	122
West Virginia	191	137	54	186	132	54
Wisconsin	402	289	113	383	270	113
Wyoming	18	15	3	13	10	3
Total	11,888	8,148	3,742	11,044	7,455	3,589

*No December report - using September 1981 data.

DEFERRAL OF EMPLOYMENT AND TRAINING FUNDS

Question: The budget proposes a deferral of $88.5 million in unspent prior-year CETA funds, of which $19.8 million would be used to offset the cost of four proposed program supplementals. Why shouldn't the Appropriations Committee rescind the balance of $68.7 million--forcing the Department to seek new budget authority for whatever pay raise supplementals may be transmitted later in Fiscal 1982?

Answer: The Department has requested a supplemental transfer of budget authority for FY 1982 pay raises to facilitate covering these mandatory items in a timely manner and lessen the associated paperwork burden of a separate request. The transfer would be offset by unobligated balances from FY 1981.

Question: Of the $88.543 million total being deferred, $85 million reflects unobligated prior year balances. Does this $85 million include any money that was originally allocated to prime sponsors by formula, was considered excess at the end of the fiscal year and was never reallocated? Does it include any money that was not obligated because it was offset by excess carry-in in prime sponsors' grants? If this is so, doesn't this increase the discretionary share of appropriated funds beyond that permitted by the legal formula?

Answer: This $85 million does not include any money originally allocated by formula. It also does not include monies not obligated because of offsets of excess carryover in prime sponsors' grants.

UNOBLIGATED YOUTH FUNDS

Question: You are proposing not to use $6.5 million in unspent fiscal 1981 Job Corps appropriations, and $16 million in fiscal 1981 funds appropriated for the Youth Employment and Training program, despite the fact that these funds are available throughout fiscal 1982. With six months left in the fiscal year, why can't these funds be effectively used? Since the continuing resolution requires cutting Job Corps enrollees from 44,000 down to 32,000, couldn't you use the extra $6.5 million to alleviate the severity of the phasedown?

Answer: The continuing resolution provides sufficient funds for Job Corps to operate for the remainder of fiscal 1982. The $6.5 million in unobligated fiscal 1981 funds were not anticipated in the planning process for fiscal 1982 and are not necessary for fiscal 1982 operations.

The Administration's long-term strategy for the Job Corps is that the program should be stabilized at an enrollment capacity of 22,000. The fiscal 1983 budget request contains sufficient funds to achieve this stabilization during that fiscal year. Consequently, the unobligated fiscal 1981 funds are needed neither for fiscal 1982 operations, nor achieving the Administration's goals for the longer term.

Question: Since the President's September budget request was $213 million for the Youth Employment and Training Program, and the continuing resolution only provides $192 million, why are you proposing not to spend $16 million in available carryover funds? With black youth unemployment at 42 percent in February, 1982, what possible rationale is there that these funds are no longer needed?

Answer: The President's September budget amendments funded the YETP program at $213 million. In the third continuing resolution, the Congress reduced the level to $192 million. The program is currently at the level authorized by the Congress. The unobligated carryover funds were unanticipated and no plans for their use had been developed when 1982 program levels were determined. The final disposition of these proposed deferrals is under review. Should developments indicate that there is not a compelling operational or programmatic need for these funds, they will be proposed for rescission.

Question: With the record high youth unemployment and the commitment of Congress and administration to target upcoming employment and training legislation to disadvantaged youth, why then did the Department reduce current funding for youth programs in 267 communities by up to 25 percent? How much would it cost to restore a minimum allocation of $200,000 in deferred funds that would be left over after transfers to support supplementals?

Answer: The Department reduced funding for 267 prime sponsors by up to 25 percent. Under the third continuing resolution, the Congress reduced the amount of available discretionary resources, by which the Secretary was able to hold prime sponsors harmless. At the reduced funding level, more prime sponsors were eligible for the minimum.

With regard to the second part of the question, it is not appropriate for the Department to supply information in support of efforts to raise appropriations above the amounts requested by the President. The Department's responsibilities and perspectives are limited to a few programs, whereas the President must weigh carefully all the needs of the Federal government, and compare them against each other and against the revenues available to meet such needs.

AVAILABILITY OF FUNDS FOR OLDER WORKER DEMONSTRATION PROGRAMS

Question: The 1981 Older Americans Act Amendments changes a former permissive authority to operate demonstration programs in training and placing persons aged 55 and over in the private sector to a mandatory set-aside of funds for this private sector demonstration. Under the funding level provided in the continuing resolution, is it possible to implement this new private sector training authority?

Answer: The funding for such programs is allowable only with 1 to 3 percent of "excess" funds over and above the amount appropriated by the Congress for Fiscal Year 1978, which was $211 million. Congress appropriated $66.5 million, or one quarter of funding under the FY 82 continuing resolution, in order to make the funding cycle of this program consistent with other Federal programs which begin on October 1 of each year. Therefore, there would be no "excess" funds available in FY '82 for private sector demonstration programs.

Question: Could project sponsors begin to implement private sector training activities with existing funds?

Answer: The 1981 Amendments require that only 1 to 3 percent of the excess funds over the 1978 level of $211 million be used for private sector activities. The $66.5 million which is available for the Fiscal Year 1982 program, is for only one quarter, which will bring this program into conformity with the Federal fiscal year. We do not have funds in excess of the 1978 level of $211 million to undertake the private sector activities. However, our current sponsors have begun to place greater emphasis on linkages with private business organizations and placement in the private sector. We expect that they will meet, and possibly exceed the program's unsubsidized placement goal of 15 percent.

Question: What is your estimate of the numbers of individuals eligible for the Community Service Employment for Older Americans Program?

Answer: The number of people who are technically eligible, that is age 55 or over with an income level of less than 25 percent over the poverty level, is in excess of 8 million. However, if we consider only the eligible people age 55 or over who are in the work force, this is a much smaller figure which may be closer to a million people. The difference between the two figures includes those people who cannot work because of poor health, those who do not want to work, and those who are not looking for work.

Question: Are there steps the Department could take to better identify older workers who desire and are capable of employment, but who have difficulty entering or reentering the labor force? -- Such as dislocated workers?

Answer: The Department's programs cover a wide range of activities which aid all workers. The employment service, for example, provides testing, job referral and counseling services to job applicants. Our new legislation, the Job Training Act of 1982, will provide flexibility for special programs for displaced workers and other disadvantaged people, including older workers. We will, of course, review our assessment techniques in order to determine if better tools can be developed to focus our scarce resources on older workers.

TARGETING EFFORTS ON OLDER WORKERS MOST LIKELY TO SUCCEED

Question: The number of individuals aged 55 and over potentially eligible for the Title V Older Americans Act jobs program is many times greater than the level of enrollees that can be supported with either existing or likely future appropriations. What efforts are you taking, therefore, to enroll those most likely to make a successful transition to unsubsidized, private sector jobs--rather than simply sustaining older workers in public service jobs?

Answer: We have emphasized placement into unsubsidized jobs by taking such administrative measures as increasing the unsubsidized placement goal from 10 to 15 percent, by arranging technical assistance for sponsors on unsubsidized placement procedures, and encouraging sponsors to utilize resources already available to them to conduct job fairs, training and similar efforts.

Question: Over the years, what percent of enrollees in this program have obtained permanent, unsubsidized jobs?

Answer: The following table shows the level and rate of placements for each fiscal year.

Fiscal Year	Authorized Positions	Placement	Rate
1974	3,404	73	2.1%
1975	12,400	344	2.8%
1976	14,971	1,830	12.2%
1977	37,400	1,781	4.8%
1978	47,500	3,980	8.4%
1979	52,250	5,839	11.2%
1980	52,250	5,902	11.3%

STATUS OF NEW OLDER AMERICANS ACT REGULATIONS

Question: When do you expect to publish Federal Register regulations to carry out the newly authorized private sector demonstration projects for older workers?

Answer: The Department does not plan to publish regulations in the Federal Register because there are no excess funds over the 1978 funding level to be utilized for private sector demonstration projects.

If funds are made available for this purpose, we will utilize administrative procedures, such as a Request for Proposal, to inform the public and the Congress of our plans and program guidelines. We do not believe it would be necessary or efficient to publish regulations for this small part of the program.

Question: How quickly could you realistically expect to approve demonstration projects for funding under this new Older Americans Act authority?

Answer: We do not anticipate approving demonstration projects at this time because of funding constraints. Technically, three to five months would be required to implement demonstration projects.

Question: Do you intend to limit these demonstration projects to existing national contractors?

Answer: We have no current plans for demonstration projects.

CONFLICT BETWEEN THE OLDER WORKER STATUTE AND THE CONTINUING RESOLUTION

Question: Last fall, the Senate Appropriations Committee recommended a $207,800,000 reduction in the Community Service Employment for Older Americans appropriation, eliminating the forward-funding of this program, while retaining the current level of 54,200 job opportunities. This recommendation has now been incorporated into law under the continuing resolution. Subsequently, however, a 3-year extension of the Older Americans Act was enacted, mandating use of appropriations to continue forward-funding of the older worker program. Does the Department have a legal ruling that the appropriations bill takes precedence over the authorizing statute, deleting the forward-funding of older worker projects? Do you view this new authorizing legislation as sufficient rationale for Congress to now restore forward-funding of the older worker program on the next continuing resolution?

Answer: We are presently asking the Department's Solicitor to provide a legal opinion regarding the subject questions. We will be pleased to convey such opinion to the Committee as soon as it is rendered.

FORWARD FUNDING JOBS FOR THE ELDERLY

Question: Do you foresee any major problems--legal or administrative--in making the transition from a forward-funding jobs for the elderly program, to a program operated on a fiscal year basis as provided under the continuing resolution?

Answer: No. We are in the process of seeking legal counsel from our Solicitor's Office regarding this matter. We will be happy to respond more fully once an opinion is rendered.

Question: What are the advantages and disadvantages of forward-funding this program?

Answer: Forward funding lessens funding uncertainties and improves planning. The major disadvantage is the commitment of funds long before their actual requirement.

JOBS FOR THE ELDERLY/STATES VS. NATIONAL CONTRACTORS

Question: What would be the impact in each of fiscal years 1982 and 1983, of an amendment to require that 80 percent of funds appropriated under Title V of the Older Americans Act go to national contractors?

Answer: It would not change the allocation to a particular State as a geographic area, only the division of funds among the sponsors within the State. A switch of funding from State sponsors to national sponsors would create certain administrative problems and result in loss of State controlled positions.

Question: For the record, trace the history of the allocation of Older Americans Act Title V funds between the States and national contractors?

Answer: The chart below shows the allocation history since 1976.

Year	National Sponsors $	Percent	State Sponsors $	Percent
1976	55,063	98.5	837	1.5
1977	119,916	80	30,084	20
1978	160,720	80	40,180	20
1979	180,331	79	48,845	21
1980	198,512	77	59,811	23
1981	209,847	76	67,253	24
1982	50,382	76	16,146	24

Question: Did Appropriations Bills ever contain legislative language to override the statutory distribution of Title V funds between States and National Contractors, and what was the reaction of the authorizing committees to such attempts?

Answer: There have been some differing opinions between the authorizing and the appropriations committees as to the distribution of funds between States and national sponsors. To this date, the Department has continued to distribute funds through the legislatively mandated distribution process.

JOBS FOR ELDERLY

Question: Public service jobs under CETA, some two percent of which were held by older workers, have been abolished. Jobs formerly funded under Title X of the Economic Development Act, more recently supported under Title III of CETA, are being phased out. How many jobs for older workers, broken down by program, were funded in fiscal year 1981 and 1982?

Answer: The following table shows participant levels for older workers by CETA title:

	FY '81 (actual)	FY '82 (estimated)
IIBC	29,235	21,106
IID	15,084	
III	9,567	6,285
VI	8,510	
VII	1,718	1,560
	64,114	28,951
V	77,000	76,000 *

* (Older Americans Act)

Question: How many older worker jobs could be provided if the full authorization of $293,726,000 were provided in fiscal year 1983?

Answer: It is not appropriate for the Department to supply information in support of efforts to raise appropriations above the amounts requested by the President. The Department's responsibilities and perspectives are limited to a few programs, whereas the President must weigh carefully all the needs of the Federal government, and compare them against each other and against the revenues available to meet such needs.

INDIANS/RURAL MANPOWER NEEDS

Question: What amount of CETA funding went to Indian tribes in fiscal 1981, compared to amounts available in fiscal 1982 under the continuing resolution?

Answer: In FY '81, Indians and Native Americans received $162.8 million in total CETA funds. In FY '82, they will receive $89.3 million.

Question: Has the cutback in CETA funding been disproportionately more severe on Indian tribes than other groups?

Answer: No. All cuts have been applied to all titles of CETA equally.

Question: How much of a cutback in CETA funding has occurred in rural areas with high unemployment, between fiscal years 1981 and 1982?

Answer: Data on urban and rural areas are not collected in the CETA information system. However, if the unemployment rate increased in a specific area between FY 1981 and FY 1982, then the cutback in CETA funding would be less than the average cutback in funding in areas where the unemployment rate remained the same.

Question: What could be done to not only earmark additional funding for Indians under Section 302 of CETA, but at the same time insure that rural areas with high rates of unemployment also received augmented funding?

Answer: As you know, the President must weigh carefully all the needs of the Federal government and compare them against each other and against the revenue available to meet these needs. In view of this, it does not seem appropriate to discuss increasing or augmenting funds in this program above the amounts requested by the President.

PROHIBITION ON USE OF CETA FUNDS

Question: What action has been taken to implement the Continuing Resolution proviso which prohibits use of CETA funds for enrolling those who advocate violent overthrow of the U.S. Government? What is the opinion of the Labor Department concerning arguments that this proviso is an unconstitutional infringement of freedom of speech? Is legislative history necessary to make it clear this proviso relates only to advocacy of immediate violent action, instead of merely expression of ideas?

Answer: We would prefer not to comment on these questions at this time. As you may know, this provision is presently in litigation. (Blitz vs. Donovan) The Secretary can take no action on this provision until the litigation is resolved.

LABOR-MANAGEMENT SERVICES SUPPLEMENTAL

Question: What would be the impact of waiting until either the regular supplemental, or deferring these requests entirely until fiscal 1983?

Answer: As you are aware, the Labor-Management Services Administration realized a 266 position loss from fiscal year 1981 to 1982. These same losses carry forward into fiscal year 1983 with the exception of an enhancement request for the Labor-Management Standards program.

Prior to the position reduction in 1982, targeting and analysis was accomplished primarily through time consuming manual systems. As limited dollars became available, we began developing automated targeting systems. However, the systems currently in place were developed in early program periods, using rather unsophisticated techniques and gross data. These methods have become more and more inadequate as the number of reports being filed increases and the number of staff decreases. Our remaining resources are not being effectively utilized, as a very significant portion of investigator time continues to be spent on "hit or miss" targeting methods.

The only alternative we have is automation, and automation requires extended lead times for development. Therefore, should there be any delay or denial of LMSA's supplemental request, we will begin fiscal year 1983 without the ability to provide comprehensive support necessary to the implementation of aggressive enforcement efforts. We must, as soon as possible, be in a position to effectively identify organizations which are most likely to have financial irregularities. Delays will, very simply, have an adverse impact on the entire enforcement emphasis and strategy of the Administration and the Department.

Regarding $300,000 of the supplemental request identified for printing: The Pension and Welfare Benefit Program publishes regulations under ERISA and exemptions from the prohibited transaction provisions of the law in the Federal Register. Exemptions comprise the major part of printing requirements and are an important element to deregulation efforts. Thus far, we have paid publishing costs by further delaying essential ADP planning and processing, but this cannot continue.

Supplemental funds requested to complete and maintain the microfiching of union records should not be delayed or denied primarily because any setback would result in increased costs and effort associated with start-up and recovery of this partially completed system. Microfiching union reports will decrease hard copy files, insure file integrity and security, reduce file storage, give us capability to provide entire historical records, by organization, to appropriate field offices and will increase our ability to perform our public disclosure responsibility.

Question: Explain the "computer targeting system," for which $807,000 is being requested under the Pension and Welfare Benefit Programs?

Answer: Of the total $807,000 supplemental funds requested, $300,000 will be utilized for publishing, in the Federal Register, regulations under ERISA and exemptions from the prohibited transaction provisions of the law. The remaining $507,000 will be utilized for improved computer targeting methods.

The current budget estimate for FY 1982 does not include sufficient funds for the Pension program to continue operating its computerized targeting system.

The Pension and Welfare Benefit Programs is responsible for insuring compliance with ERISA fiduciary, reporting and disclosure standards by over 5 million pension and welfare plans containing over $300 billion in assets. Over 700,000 financial reports are filed each year with the Department. The foundation of an effective enforcement program is the efficient targeting of investigations, to a large extent relying on the information disclosed by plans in the annual report. Unfortunately, the current targeting system is not effective.

Current targeting methods were developed early in the program, using rather unsophisticated techniques and gross data from returns. These methods have become more and more inadequate as the number of reports being filed has increased. Improved targeting systems must be installed that are resource efficient and that allow us to perform the critical integrated analyses that are so necessary for effective civil and criminal enforcement and compliance targeting. The application of methodologies such as time series and cluster analyses will provide the program with a system which will allow more effective utilization of investigator time. We must have the capability to establish long-range trend indicators, and profiles of violations in order to develop a framework for effectively identifying anomalies in specific categories, and analyzing financial data associated with specific plans. Unfortunately, sophisticated automation of this nature requires extended lead times for development, but until we have the capability to target potential civil and criminal violations efficiently, we will not be in a position to more aggressively enforce this important law.

FEDERAL EMPLOYEES' COMPENSATION ACT PROGRAM

Question: What is the current backlog of workers' compensation cases, and how much would the backlog grow in the absence of the $1,423,000 requested supplemental?

Answer: At the end of February 1982, the FECA pending case inventory was 66,776. The program goal, assuming supplemental funding is available, is to have an inventory level no greater than 65,000 cases. Without the supplemental funding, FEC employees would be faced with a furlough of three weeks duration during the latter part of FY 1982. There would probably be a staggered furlough over a period of six weeks (no final decision has been made on precisely how the furloughs would be handled) with 50% of the staff furloughed at any given time. As a consequence, very little work would be accomplished on new cases or claims received, as staff resources are focused on the maintenance of existing workload, to include benefit payments. During that six-week period, it can be expected that 22,000 new cases would be received (to include claims, continuation-of-pay cases, injury reports). These would be added to the existing inventory. Some of the on-going maintenance work would decrease the cases in the existing inventory but not nearly fast enough to compensate for the new case inflow. As a result, the inventory would reach 84,000 by the end of the year. This figure will likely go even higher in FY 1983 before it begins receding, due primarily to the "snowballing" effect that increased inventories and delayed processing times have on the workload (by generating increased claimant/Congressional inquiries).

Question: What is the average waiting period from the time a claim is filed until a final decision is made and the claimant notified?

Answer: For the first five months of FY 1982, 87.1% of all traumatic injury cases were processed within 45 days (OWCP standard is 85% within 45 days). By "process", we are referring to that period of time from receipt of a case by OWCP to the initial adjudication of the case. The average was 28 days.

For non-traumatic cases, 54% were processed within 180 days (vs. OWCP standard of 80%). The average was just over 200 days.

The time-lag between date of injury and receipt by OWCP is a function of each individual Federal agency, and there is considerable variation here. However, the majority of injury cases are received by OWCP within 30 days of the injury.

As far as the time to notify the claimant is concerned, it is our practice to notify the claimant within 5 - 10 days after a decision has been made.

Question: How long would processing delays be increased, on the average, if supplemental funding is not provided?

Answer: For the first five months of FY 1982, 87.1% of all traumatic injury cases were processed within 45 days while 54% of all non-traumatic cases were processed within 180 days. If the staff were furloughed for three weeks at a time over a six-week period, it is doubtful if any significant processing of new case inflow will occur during that period, as all remaining resources will be directed at maintenance (to include benefit payment) functions. As the inventory of new cases grows, the processing times for these cases will stretch. As a result, we expect that by the end of FY 1982, traumatic case processing would decline from current levels (87.1% in 45 days) to 75% processed within 45 days while non-traumatic case processing would fall to 45%-50% processed within six months from the current level of 54% within six months. The residual effect of a growing inventory would preclude any significant improvement in those figures until the latter part of FY 1983. The residual effect would include an increase in staff time devoted to the increasing number of inquiries and complaints.

SPECIAL TARGETED ENFORCEMENT PROGRAM IN THE WAGE-HOUR DIVISION

Question: How much should be cut from your supplemental request, if Congress wanted to eliminate this program, when the continuing resolution comes up for renewal?

Answer: In the event Congress wished to eliminate the Special Targeted Enforcement Program (STEP), $1,028,000 could be cut from our program Supplemental Request. One full time equivalent can complete approximately 49 STEP investigations. The Wage and Hour Program anticipates the completion of 1650 STEP investigations in FY 1982. This represents a workload sufficient for 34 FTE's. At an average salary of $30,240 per year, this program represents $1,028,000 in Personnel Compensation obligations.

OSHA STATE PROGRAMS

Question: What activities will be reduced to make available the extra $3.8 million for state programs?

Answer: OSHA will transfer funds from the following programs to meet the requirements for the $3.8 million transfer: Consultation - ($2,478,000), Regulatory Analysis - ($750,000), CSHO Training - ($500,000). An additional $72,000 will be transferred to state programs by adjusting available funds from several miscellaneous programs.

PROPOSED OSHA BILL LANGUAGE CHANGE

Question: You are proposing bill language to permit approval of state OSHA plans that provide administrative and enforcement staffing levels equivalent to Federal levels. What objections have been raised to the proposed change, and how do you respond to these objections?

Answer: To date, we have received no formal complaint or objection to the proposed bill language.

Question: What justification is there for including this change in an appropriations bill, rather than going through the authorizing committees?

Answer: In the 1978 U.S. Court of Appeals decision, AFL-CIO v. Marshall, OSHA was required to develop state compliance staffing levels necessary for a "fully effective" state occupational safety and health program. These levels were to be used in determining state qualification for assuming full enforcement responsibility under section 18(e) of the OSHA Act. In its decision, the Circuit Court indicated that the "fully effective" level established by the agency could be modified by a Congressional action evincing "a legislative judgment that the administrative goal was excessive." OSHA also enunciated this principle in its Report to the Court on benchmarks.

In the last several years, it appears that Congress has essentially indicated through the appropriations process that the agency's benchmark goals were excessive by not providing funds for increased state staffing. The proposed language merely makes explicit that judgment and would allow OSHA to grant final approval to eligible states.

Question: Does this proposed language improperly interfere with an ongoing court negotiation.

Answer: No. The Court decision and Court order requires that appropriate staffing levels and a schedule for states to meet those levels be developed and revised as appropriate. This was initially accomplished in April 1980. The only additional requirement imposed on OSHA is that any revisions to the benchmarks be provided to the AFL-CIO prior to their implemention. The proposed language does not interfere with court proceedings in either of these cases.

SAND AND GRAVEL RIDER

Question: Isn't it true that you have found adequate solutions to administrative problems involved in transferring jurisdiction over stone, sand and gravel operations from MSHA to OSHA?

Answer: OSHA is continuing to explore avenues for covering the surface mines that would be affected by a transfer of jurisdiction from MSHA to OSHA. Upon enactment of the continuing resolution, OSHA instructed its field offices to assume enforcement authority at mining operations affected by the rider. While some questions remain concerning the legality of this assumption of authority, OSHA is nevertheless responding to reports of imminent danger, fatalities, catastrophies, and employee complaints. At present, no general schedule (agency-initiated) inspections are being performed at surface mines addressed by the rider.

Should the MSHA restrictions remain, OSHA is considering various options for future agency activities at these mines. It is anticipated that OSHA will enforce its general industry standards (29 CFR 1910) to the extent that these regulations apply to hazards at surface mines. Recognizing that OSHA standards do not specifically address mining hazards, the Agency intends to apply the "general duty clause" [section 5 (a)(1)] of the OSH Act as needed to address those serious workplace conditions not covered by specific Agency standards. OSHA's construction industry standards (29 CFR 1926) are legally enforceable only for construction, alteration, and repair work. Thus, these standards are not applicable to surface mining operations and equipment despite their similarity to construction activities.

OSHA is also looking into the question of scheduling routine inspections in affected surface mines. The Agency is limited in conducting such inspections by an amendment to its appropriations which prohibits general schedule safety inspections in Standard Industrial Classifications with ten or fewer employees and a better than average lost workday injury record. We estimate that 86 percent of surface sand and gravel mines and 66 percent of surface stone mines are exempted from OSHA's general schedule safety inspections as a result of this restriction. OSHA is also examining the possibility of implementing a special emphasis program for some 18 surface mines which MSHA considered to be especially hazardous. As a more permanent solution, OSHA is still developing a formal program instruction that will more adequately address the administrative problems involved in the transfer of jurisdiction from MSHA to OSHA.

Question: Can you summarize the policy document that you are preparing to implement once Congress extends the sand and gravel appropriations limitation on the continuing resolution for the balance of fiscal 1982?

Answer: OSHA has developed a draft program instruction to address the responsibilities accepted as a result of the sand and gravel appropriations limitation. This document is still under review by the Assistant Secretary. The instruction describes compliance guidelines for OSHA Regional Administrators, Area Directors and Compliance Officers including guidelines for the enforcement of OSHA administrative, recordkeeping and any applicable training regulations.

The draft policy document provides guidelines on the use and applicability of OSHA safety and health standards, including the OSHA General Industry and Construction Industry standards. Use of the OSHA "General Duty Clause" (section 5(a)(1) of the OSHA Act) is described for hazardous situations at surface mining and milling sites where no OSHA standards apply and which are likely to result in death or serious physical harm. Procedures are also given for the scheduling of inspections at surface mine sites. The instruction provides further guidance on actions to be followed should jurisdictional or legal problems arise involving confusion betwen OSHA and MSHA cases. Finally, since the draft instruction describes a Federal program change that impacts state occupational safety and health programs, various instructions are also given for state designees to ensure that safety and health coverage is provided to all affected employees as specified in the appropriations limitation.

ILLEGAL MSHA REPROGRAMMING?

Question: Originally, the Administration proposed a rescission of $4 million from MSHA, then reduced the amount to $2 million. As you indicated in your opening statement, the purpose of this change was to actually permit the hiring of additional inspectors relating to coal enforcement. Doesn't this in reality constitute an illegal reprogramming of funds from sand and gravel activities, bypassing the traditional process of getting Appropriations Committee approval?

Answer: The procedure used for funding adjustments was made after consultation with the Office of Management and Budget. It was felt that discussions during the rescission hearings and subsequent congressional action on the rescission request would determine Appropriations Committee approval. MSHA does not intend to reprogram any funds without the consent of the Appropriations Committee.

Question: What action has been taken so far to unilaterally hire additional coal inspectors?

Answer: MSHA requested the Office of Personnel Management to open a register for the coal mine inspector position. In addition, MSHA is analyzing all applications currently on file and determining those employees qualified. Immediate action has been taken to offer qualified furloughed employees jobs in geographical areas of critical need. In addition, several former employees interested in returning to work as inspectors have been offered employment and are completing fitness-for-duty medical examinations. MSHA is also finalizing new inspector qualification requirements consistent with Office of Personnel Management regulations and expects to open the inspection register in the near future.

Question: Why didn't you simply request a rescission of $4 million related to sand and gravel activities, and a supplemental of $2 million to hire extra coal inspectors?

Answer: It appears the request could have been made by either a revised rescission or a supplemental since both require approval by Congress. As mentioned earlier, it was determined that the procedure was appropriate. It accomplishes the intended objective in one action rather than in two separate actions.

Question: What happens to the funds if the rescission is not approved? What would you do with the funds?

Answer: If the rescission is not approved, MSHA will use the funds as appropriated or will propose to the Congress reprogramming alternatives.

MSHA RESCISSION: TRANSFER TO OSHA

Question: If this money were transferred to OSHA, how many inspections staff and support personnel could be hired during the remainder of fiscal 1982?

Answer: The $2 million would allow OSHA to hire 50 inspectors and 10 support personnel on a full year basis.

Question: How many of the estimated 220 staff you plan to lay off during the remainder of fiscal year 1982 could qualify for these enforcement jobs?

Answer: We are currently reviewing the work experience of the employees who have been furloughed to determine their job qualifications. MSHA intends to give its furloughed employees priority consideration in filling future job vacancies.

POSSIBLE FURTHER MSHA RESCISSION

Question: In the Appendix to the President's budget, there is an $8 million MSHA rescission "proposed for later transmittal." What exactly is this proposal, and when will it be officially transmitted to Congress?

Answer: The $8.8 million item shown in the President's budget for MSHA a "Proposed for later transmittal" in 1983 is a place holder for possible submission of legislation changes for MSHA. The details of the changes are still under discussion, and are not clear at this time. Also, the timing of submission of any legislation is not clear.

IMPACT OF MSHA LAYOFFS AND STAFFING SHIFTS

Question: How many MSHA staff have been furloughed as the result of the continuing resolution prohibition against sand and gravel enforcement activities?

Answer: A total of 220 MSHA employees have been furloughed as the result of the continuing resolution prohibition against sand and gravel enforcement activities.

Question: How many of these furloughed staff do you expect to reassign to fill the 292 additional inspector positions you are planning to hire in the coal enforcement area?

Answer: We are currently reviewing the work experience of the employees who have been furloughed to determine the job qualifications. Since many of the additional inspector positions are in different geographic locations, job interests may decline.

Question: How many sand and gravel inspectors could keep their jobs by "bumping" less senior staff out of their jobs?

Answer: The furlough of 220 metal/nonmetal employees has affected 340 employees MSHA-wide. However, since the RIF procedures consider seniority as well as other factors, only about 20 percent of those furloughed retained employment.

Question: Would this cause any major disruptions in the quality or quantity of inspections activities?

Answer: There should be no disruption in the quality of inspection activities. However, with the loss of over 12,000 mining operations from MSHA jurisdiction as a result of the continuing resolution (Public Law 97-92), the number of inspection events decreases substantially in fiscal year 1982--a decrease from over 25,000 to 15,375 inspections.

ADJUSTING TO BLS CUTS

Question: During last year's hearing on Fiscal 1982 appropriations, Commissioner Norwood was unable to identify how the Bureau of Labor Statistics could take a 3 percent cut in its budget. Subsequently, the Administration proposed a 12 percent cutback, which she now supports. How can we be sure you cannot live with the additional 4 percent cut, imposed by the continuing resolution, when you so readily adjusted to a cut much deeper than you appeared to have thought possible a year ago?

Answer: The absorption of the 12 percent cut proposed by the President for all executive branch agencies has been an extremely difficult task for the Bureau from both a management as well as a program point of view. At present, BLS has eliminated, cutback, or deferred some 19 programs. The actions have provoked strong reactions from individual data users in business, labor, academia, and government. including many members of Congress.

As a result of strong management steps to defer all postponable spending, BLS hopes to absorb the 12 percent cut without serious damage to its remaining core statistical programs. A larger than usual amount of turnover among the BLS staff has, to date, given BLS an unexpected source of aid in avoiding the costly and seriously disruptive Reduction in Force process. Given the serious problems which BLS is having in absorbing the 12 percent cut in FY 1982, an additional cut of 4 percent would seriously disrupt BLS operations during the remainder of the fiscal year. Moreover, an additional cut of 4 percent would cause the elimination of additional BLS programs. The necessity of avoiding this situation has been reviewed at the highest levels of the Executive Branch, and the proposed $5.6 FY 1982 program supplemental proposed by the President reflects the concern that the remaining BLS programs be preserved.

JUSTIFICATION FOR STATISTICAL STAFF

Question: What do these people really do?

Answer: The Bureau of Labor Statistics does not administer large-scale Federal grants or contracts as in the case of the National Cancer Institute or the Employment and Training Administration. Although some major BLS programs are supported by data collection conducted under contract with State agencies and the Bureau of the Census, these arrangements are limited to the BLS-790 Industry Employment Survey, the Occupational Employment Survey, Employment and Wages, the Current Population Survey, the Consumer Expenditure Survey, and the Point of Purchase Survey. Thus, for the majority of BLS programs including such large scale data collection programs as the monthly Consumer Price Index and the Producer Price Index Programs--two of the largest and most sensitive statistical programs conducted by the Federal Government--BLS itself directs and conducts the actual survey activities.

In terms of major functions across the Bureau's budget activities, BLS staff are allocated as follows:

BLS FY 1982 Positions by Major Function

	Functions	Percent of Total Positions
(1)	Program Management - Economic Review and Analysis	35%
(2)	Statistical Design/Analysis	4%
(3)	Data Collection	29%
(4)	Data Processing	22%
(5)	Administration and General Program Support	10%
	TOTAL	100%

Question: Why is it really necessary, for instance, to have 343 people working on Labor Force Statistics and 729 people on Prices and Cost of Living?

Answer: Staffing in a given BLS budget activity reflects the person years required to carry out the program or survey functions which are funded in that area. The programs and staffing for each of the major programs in the Labor Force and Prices and Living Conditions areas are as follows:

Total Employment by Program

Labor Force Statistics	343
Employment and Unemployment Analysis	(36)
Labor Force Studies	(22)
Employment, Hours and Earnings (790)	(92)
Insured Employment and Wages (ES-202)	(49)
Occupational Employment Statistics	(38)
Local Area Unemployment Statistics	(61)
790 Revision	(45)
Prices and Cost of Living	729
Consumer Prices and Price Indexes	(247)
Industrial Prices	(320)
Price and Index Number Research	(10)
Consumer Expenditure and Income Data	(44)
International Prices	(108)

In each of these programs, staffing requirements are very carefully reviewed in light of actual workload associated with the production of each major survey. As a broad example, part of the major difference in staffing levels between these two Activities reflects the fact that two of the major surveys which support the labor force program are conducted by the Bureau of the Census and State Employment Security Agencies. While the Bureau of the Census also collects the Consumer Expenditure and Point of Purchase data in the Price area, monthly collection for the Producer and Consumer Price Indexes is planned, directed, and carried out by BLS staff.

In view of the importance and the cost of these major programs, each has been subjected to extremely close scrutiny in the budget review process. We would be glad to provide additional supporting detail for staffing in each of these major areas if it is so desired.

Question: Isn't most of the data collection actually done by other agencies and BLS staff primarily analyze and publish statistics?

Answer: No, this is not correct. As noted earlier, BLS does contract with State Employment Security agencies for collection of the industry employment data and other series and with the Bureau of the Census for the Current Population, Consumer Expenditure, and the Point of Purchase surveys. While these are major survey efforts, BLS itself collects all the remaining data in the Employment, Wage and Price areas. As noted earlier, this includes survey work on the Consumer and Producer Price Index programs, which are two of the largest and most important surveys conducted by the Federal Government.

In addition, it should also be noted that although data collection is a labor intensive activity, it is not the only activity: survey design, data processing, tabulation, data review and analysis and publication are all additional activities that must be carried out by BLS staff, even in those programs for which BLS contracts with other agencies for the data collection.

Question: Why isn't there any explanation in your budget justification material of why it takes a specified staffing level to produce certain statistics?

Answer: We are extremely anxious to provide supporting materials at whatever level of detail is necessary to support and explain staffing levels for BLS programs. Since staffing levels for BLS programs have already been developed and carefully scrutinized at all budget review levels of the executive branch, such justifications could be presented. They have not been included in the budget because BLS staffing levels are based on widely varying individual survey and program requirements. Aggregations of these data to budget activity levels would not be useful as justification materials to justify staffing for each detailed BLS program. For example, the Consumer Price Index program is actually comprised of a series of different surveys to collect such varied information as rents, property taxes, food prices and prices of other commodities and services. Each of these surveys has specific sample sizes which generate separate workload estimates for data collectors, processing clerks, programmers and systems analysts, economists, and statisticians. These estimates for the CPI program would be completely different than the estimates required to produce area or industry wage surveys, even though the same basic functions (sample design, data collection, data processing, data review and analysis, publications) are involved. In view of the potential volume of material involved, inclusion of such materials in the Congressional Budget submission would be an overwhelming mass of detail far in excess of the detail normally supplied by agencies in the formal budget documents. BLS staff, however, would be very pleased to present the additional supporting documents to the Committee at any time.

CUTBACK IN EXECUTIVE DIRECTION STAFF

Question: In 1980, BLS has 277 staff for "Executive Direction and Staff Services." Even after all the recent budget cuts, you still have 254 administrative "overhead" staff. Can't you make a bigger reduction in Executive Direction staff?

Answer: The Executive Direction budget activity currently comprises 13 percent of the total BLS staff. Of the total number of 254 positions, approximately 100 positions are involved in what could be referred to as "overhead" functions such as personnel, budget, accounting, administrative support (mail, procurement, telephone and equipment services, building and work space management, etc.); and management information and support. Also included in this total is the Commissioner and her very small immediate office staff. The remaining Executive Direction positions are in the Offices of: (1) Field Operations, (2) Publications, (3) Statistical Operations, and (4) Research and Evaluation. These offices also carry out functions in direct support of the Bureau's major program areas (Prices, Wages, Employment, etc.) on a Bureau-wide basis, thus their location for budget presentation purposes in the Executive Direction budget activity.

Staffing in these various offices has been reduced in recent years and now is barely consistent with workload and operational requirements. Further reductions would place in serious jeopardy the Bureau's ability to meet the legal and administrative requirements to operate the agency as well as those imposed by such agencies as OMB, DOL, GAO, GSA, OPM as well as the Congress.

BLS REGIONAL OFFICES

Question: How many staff are assigned to the 8 BLS regional offices?

Answer: Currently, there are 468 full-time authorized S&E positions in the 8 BLS regional offices. This includes positions funded by individual survey programs as well as Executive Direction resources responsible for overall administrative, inquiries and correspondence, etc.

Question: What work is carried out by the regional offices?

Answer: Regional offices are responsible for the collection (and processing when appropriate) for all primary data required for national and local programs. These include the following:

a. The Consumer Price Index Program
b. The Produce Price Index Program
c. The International Price Program
d. The Employment Cost Index Program
e. Occupational Wage Survey Program (including (1) the annual survey of Professional, Administrative, Technical and Clerical salaries for use in setting Federal white collar pay, (2) surveys of

wages in 70 metropolitan areas and (3) surveys of wages and benefits in 10 industries.)

In addition, the Regional Offices provide program direction to cooperating State agencies in a broad range of BLS Federal/State statistical programs which provide National, State and local data on industry employment, hours and earnings, occupational employment statistics, insured employment and wages, and occupational safety and health. In this connection the Regional Offices:

Provide technical assistance to cooperating State agencies in handling technical statistical problems that arise;

Provide training to staff of cooperating State agencies when turnover occurs and when changes in statistical programs or statistical techniques are introduced;

Monitor statistical operations in cooperative State agencies to assure the smooth integration of interdependent State/National functions;

Review and certify the quality of data produced.

Finally, the Regional Offices through the Regional Commissioners and their staffs provide advice and counsel to the business community, commerce and trade associatons, local governments, labor organizations the academic community, and the general public on the uses of BLS data. These services are of particular importance to business firms who are respondents or potential respondents in BLS surveys, and are vital to eliciting their cooperation which, except for the safety and health statistics program where cooperation is mandated by legislation, is given on a totally voluntary basis.

Question: Can Regional Office operations be further streamlined?

Answer: It is important to remember that the Regional Offices are the production center of the Bureau. The Bureau's statistical series that are establishment-based start first with the data collected in the field. Efforts are continuously underway to streamline methods of operation in the field to make them more cost-effective. Even though field operations have been reduced in the last two budget cycles as a result of cuts in both program operations and administrative overhead--by 11 S&E full-time positions in FY 1981 and another 46 in 1982--activities to improve the effectiveness of field operations have been, and will continue to be, underway as follows:

(a) Emphasizing on the cross-training of regional staff to enable each individual to be utilized in the most efficient way.

(b) Scheduling work to maximize staff utilization and minimize travel costs,

(c) Modifying organizational structure to bring about a reduction in the number of supervisory positions and to reduce overhead costs,

(d) Monitoring and controlling grade levels and non-labor costs to minimize expenditures wherever possible,

(e) Reviewing and modifying where possible collection and processing methodology to take advantage of the most cost efficient technology.

BLS CUTS IN THE 12 PERCENT REDUCTION

Question: What Bureau of Labor Statistics programs will be reduced or eliminated at the 12 percent reduction level? Please provide a detailed list for the record, indicating savings associated with each cutback.

Answer: Bureau programs that have been eliminated as a result of the 12 percent reduction are shown below together with an estimate of the savings associated with each cutback.

	Programs	Savings (in $000's)
1.	Labor Turnover	646.0
2.	Current Population Survey: Sample reduction and May Supplement and related activities	5,149.0
3.	Local Area Unemployment Statistics: Research contracts to improve methodology; national system for exchange of nonresident claims data; and analysis of LAUS data	701.6
4.	Family Budgets	447.5
5.	Consumer Prices: Special pricing for CPI-W and index for Fairbanks, Alaska	1,000.0
6.	Producer Prices: Developmental work in services and related reductions	600.0
7.	International Prices: FY 1981 expansion to 81 percent coverage	321.5
8.	Consumer Expenditure Survey, rural sample	300.0
9.	Work Stoppage Statistics: Reduction in coverage to major disputes only	468.4
10.	Occupational Wage Surveys: Reduction of about 5 surveys	1,113.2
11.	Collective Bargaining Agreements: Analysis of provisions and characteristics	480.1
12.	Construction Labor and Materials Requirements Surveys	783.1
13.	Reductions in Occupational Outlook Handbook and economic growth model and related projections	592.4
14.	Administrative reductions (All activities)	2,162.4
	BLS Total	$14,765.0

SUBCOMMITTEE RECESS

Senator RUDMAN. The subcommittee will now stand in recess until Tuesday, March 16, to meet at 10 a.m., in this room to begin Department of Education hearings on fiscal year 1983 budget requests.

Thank you.

Mr. ZUCK. Thank you, Mr. Chairman.

[Whereupon, at 10:30 a.m., Monday, March 15, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, March 16.]

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1983

WEDNESDAY, APRIL 21, 1982

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 11 a.m., in room 1114 Everett McKinley Dirksen Senate Office Building, Hon. Warren Rudman presiding.

Present: Senator Rudman.

DEPARTMENT OF LABOR

STATEMENT OF ALBERT ANGRISANI, ASSISTANT SECRETARY OF LABOR

ACCOMPANIED BY:

ROBERTS T. JONES, ADMINISTRATOR, OFFICE OF MANAGEMENT ASSISTANCE

T. C. KOMAREK, ACTING ADMINISTRATOR, OFFICE OF FINANCIAL CONTROL AND MANAGEMENT SYSTEMS

WILLIAM B. LEWIS, ADMINISTRATOR, UNEMPLOYMENT INSURANCE SERVICE

SUBCOMMITTEE PROCEDURE

Senator RUDMAN. The subcommittee will come to order.

Today we are going to hear testimony concerning the fiscal year 1983 budget request for Federal employment and training programs. The budget proposes a major consolidation of existing programs through new legislation to replace the expiring Comprehensive Employment and Training Act. A controversial part of this proposal would also eliminate the existing jobs for the elderly program authorized under title V of the Older Americans Act. The only parts of the budget not subject to proposed legislative changes are those for State employment service and unemployment insurance operations.

Here to explain these proposals is Al Angrisani, Assistant Secretary for Employment and Training. Mr. Secretary, if you would just introduce your associates and go ahead with whatever opening remarks you would like to make.

INTRODUCTION OF ASSOCIATES

Mr. ANGRISANI. Thank you, Mr. Chairman.

I have on my left Tom Komarek, our Chief Financial Officer.

Roberts Jones, our Chief Training Administrator, and Bert Lewis, our Chief Employment Security Officer, are on my right.

I would like to submit my statement for the record, if I may, and just say a few words of background. No. 1, this is my first opportunity to appear before you and it is indeed a pleasure and I look forward to clarifying any questions that the committee might have.

I would just like to recap five basic points from last year that suggest the accomplishments made by my administration during a very difficult year in which we produced some $9 to $10 billion of budget cuts for the administration in the President's overall package of about $40 billion in cuts.

During that period of time, we successfully phased out the public service employment portion of the CETA program, and in the process, managed to conduct our own transition employment effort which helped to ease the blow of cutting that program. We placed approximately 50 percent of our participants in other jobs or training programs.

In addition to that, we managed a RIF of some 412 individuals in ETA, and we managed it in a way which caused basically no disruption to the services provided to our constituencies.

Third, we were faced, Mr. Chairman, with the very uncomfortable position of having about 600 unresolved audits when we came into office back about a year or so ago. These audits accounted for some $300 million in funds and we were successful in resolving that audit backlog to zero and maintaining a current status in all of our audit accounts right now.

In addition to that, in the unemployment and compensation programs, we successfully implemented a legislative program which will result in benefit savings of approximately $6.7 million in fiscal years 1982 and 1983 through reforms to the unemployment insurance system.

Then, last, and probably a strong note for the future, we have begun the process of putting into place a very strong cash management system which ETA has never really had before, which should keep all of our accounts current in terms of audits and financial matters in general. Thank you, Mr. Chairman.

PREPARED STATEMENT

Senator RUDMAN. Your prepared statement will be placed in the record at this point.

[The statement follows:]

STATEMENT OF ALBERT ANGRISANI

Mr. Chairman and Members of the Committee, I am pleased to appear before you today to discuss the Employment and Training Administration's Fiscal Year 1983 budget requests. Before I address the specifics of each appropriation request, I would like to address some general principles upon which our budget is based.

First, this budget assumes the passage of certain changes in entitlement programs administered by the Employment and Training Administration, specifically in the Federal Unemployment Benefits Account. The changes are proposed as part of the President's overall goal of reforming entitlements where inequities in benefits provided occur, in addition to eliminating certain work disincentives now inherent in these programs.

Second, a request in the fiscal 1983 budget to be transmitted later will provide funding for job training programs to be delivered under a legislative framework that will replace the current Comprehensive Employment and Training Act (CETA) authority. The proposed legislation was transmitted to Congress on March 9. Its basic outlines include the concept of grants to States for training and employment services, the provision of a nationally administered program for certain labor market groups, and the continuation of the Jobs Corps as a separate program. The President will forward an official budget amendment for $2.4 billion as the base funding amount of this program.

I will now address some of the details of our fiscal year 1983 request. The Employment and Training Administration's requests for fiscal 1983 are for $4.7 billion in Federal fund budget authority and $2.4 billion in trust fund transfer authority for a total of $7.1 billion. In addition, as I mentioned earlier, the Administration will also forward a request of $2.4 billion for the Employment and Training Assistance appropriation, to fund the new legislative program.

In the Federal Unemployment Benefits and Allowances appropriation, the Administration request is $35 million. This request reflects savings anticipated from passage of three legislative proposals, which the Administration has recently sent or will forward to Congress shortly. The proposals include legislation to eliminate the additional Trade Adjustment Assistance benefit, provided over and above regular unemployment benefits, to those persons whose unemployment has been determined to be related to the adverse affects of imports. Training and employment services to these persons will be continued. This proposal is in line with the president's goals of removing the inequitities in cash payments to individuals in similar situations, and eliminating the lengthy benefit receipt. The Administration will also be proposing to limit Redwood benefits to only those persons who lost their jobs as a direct result of the expansion of the Redwood National Park on or before December 31, 1978. Again, this is an effort to limit excess benefits and to eliminate disincentives to the seeking of new employment. Finally, the Administration has proposed changes to the unemployment program for ex-servicemembers, that will limit unemployment benefits only to those servicemembers involuntarily discharged due to demobilization, reduction-in-force or disability incurred while in service.

We are requesting $4.6 billion in the Advances to the Unemployment Trust Fund and Other Funds appropriation to provide for general fund advances to the Unemployment Trust Fund ($4.5 billion) and to the Black Lung Disability Trust Fund ($62 million). The advances to the Unemployment Trust Fund will be used predominantly to provide loans to States with insufficient trust fund balances to meet benefit payments ($4.5 billion) although a small amount is anticipated to be required for the Federal Employee's Compensation Account ($10 million).

In the Grants to States appropriation, we are requesting $2.3 billion in funding for State administration of unemployment insurance and employment services in 1983. The request includes the recent Fiscal Year 1983 budget amendment for the employment service of $283 million, which the President presented to be consistent with the 1982 supplemental action he requested and signed into law on February 22. The total requested for Employment Service activities is $740.8 million and will support 21,800 staff years. For Unemployment Insurance activities, the request totals $1.6 billion, and will support workloads anticipated under the projected total unemployment rate of 8.1 percent and insured unemployment rate of 4.5 percent.

Of the $2.4 billion expected to be requested for the Employment and Training Assistance appropriation, for new employment and training programs, $1.8 billion will be for a new program of grants to States for operation of employment training programs under new legislative authority; $387 million will be for the Job Corps program, which will be continued under the new legislation as a separate program; and the remaining $200 million in the request will be for operation of a nationally-administered program to serve groups who have particular disadvantages in the labor market.

Finally, in the area of federal staff, we are proposing $122.5 million to fund 2,113 positions, a reduction of $8.4 million and 412 positions from the comparable 1982 level. Full-time employment, including that financed by reimbursement from other agencies, is projected to decrease during the year from 2,519 to 2,197. We believe this reduction is possible due to the reduced Federal role envisioned under the Administration's new employment and training legislation and the termination of the Work Incentives Program.

This concludes my statement, Mr. Chairman. My staff and I will be happy to answer any questions you, or the Members of the Subcommittee, may have.

Biographical Sketch

ALBERT ANGRISANI
Assistant Secretary of Labor
Employment and Training Administration
Department of Labor

Albert Angrisani was confirmed as Assistant Secretary of Labor by the Senate on March 12, 1981.

As chief officer in the Department of Labor for employment and training programs, Mr. Angrisani provides policy and management direction to the administration of such activities as comprehensive job training; unemployment insurance; employment services; apprenticeship promotion; alien worker certification; work incentive programs for welfare recipients; programs of tax credit for employers who hire hard-to-employ workers; and research and development, technical assistance, and labor market information for the Nation's employment and training efforts.

From August 1978 until his appointment as Assistant Secretary, Mr. Angrisani was Vice President of the Chase Manhattan Bank of New York. Previously, he served with the bank as assistant vice president (1977-1978), investments and product manager (1974-1977), and investment assistant (1972-1974).

Mr. Angrisani received his bachelor's degree from Washington and Lee University in 1971, his master's in business administration from Fairleigh Dickinson University in 1974, and an Advanced Professional Certificate from New York University Graduate School of Business Administration in 1978. He has served as a Councilman and Council President of the Borough of Bernardsville in New Jersey.

The Assistant Secretary was born on August 26, 1949, in Newark, New Jersey. He is married to the former Caroline Purnell. They live in Arlington, Virginia, with their infant daughter.

REDUCTION IN OLDER AMERICANS PROGRAM

Senator RUDMAN. We will try to go through this in a programmatic way and talk about various things that we are obviously concerned with. We will start out with the whole question of jobs for the elderly. Thirteen of the fifteen members of the Senate special committee on aging have written to the Appropriations Committee in support of continuing the community service employment for older Americans program. It currently provides about 54,000 jobs for people 55 and over. They point out in their letter that half the jobs are in senior centers and nutrition sites and those services would be severely damaged, in their view, if those jobs were eliminated.

I wonder if there is any reconsideration in the decision to abolish that particular program and how you respond to those concerns?

Mr. ANGRISANI. Well, everything you have said is accurate. The elimination of title V of the Older Americans Act is, in fact, in our budget. We zeroed the funding level out. And it would result in the loss of jobs, just as you stated.

I think, by way of background, I need to explain the reason for that. We are trying in the Department of Labor, Secretary Donovan and myself, with regard to training, to establish one clear thing while we're here in office. It is that training activities are substantially different than income support activities.

In the past CETA system, and in title V of the older Americans account, a lot of things have been done in the name of training that are actually income support activities. We have drawn a very firm line in that area and have said that what we would like to do in our new legislative package is to establish a training program, not an income support or an income transfer program.

Along that line, in terms of implementing that philosophy, title V of the older Americans account, which is largely an income support account we zeroed out—however, in our training legislation, we provided ample room to take care of the training needs of older Americans. More money than ever before can be spent to train elderly Americans who need retraining, those in the 55 years of age and above category. But clearly, that allowed for the elimination of the income support activities.

In terms of reconsideration, I know that Secretary Donovan is talking to OMB about some no-cost options for reallocations among our accounts that might take care of that loss of the 54,000 jobs. But as of now, that's all that I know on that subject.

Senator RUDMAN. If, in fact, your program was adopted and there were not consideration in this area, then it would be accurate to say that these jobs in these centers would, in fact, be lost because I do not believe under what your legislation would propose in the area of training, that those jobs would go into these areas. Am I correct?

Mr. ANGRISANI. That is correct.

Senator RUDMAN. Has there been any investigative work done by your office to determine the effectiveness of this particular program and whether or not it was effective, whether or not it had a great deal of fraud or abuse, whether or not the money could be assessed as being well spent? Have you done that?

Mr. ANGRISANI. We have looked into it, obviously, in the last year on a superficial basis. I would say that it would be appropriate to say that as an income support program, it was rather successful. It provided 54,000 slots and I think significantly more individuals participated.

As a training program, it probably was not successful, if you measure training based upon ultimate retention of a private sector job. In terms of fraud and abuse, I have to admit, that at the request of a number of Senators, we have just started looking into that and we intend to conduct a full-scale investigation into some of the accusations made with regard to the way the accounting has been handled, particularly the eight national sponsors.

Senator RUDMAN. Well, I think if you were to look at that program closely, you would find that probably, it has been one of the more successful ones. And the real question that comes down here is that you are going into the training area and you are talking about people 55 and over getting into very serious considerations as to how effective that will be in terms of the employment markets that are there versus the fact that these particular jobs, whether you call them training or income support, are in fact fulfilling a rather important objective in some very important places around this country where senior citizens tend to go for services.

It has been interesting to see the kind of mail that has been generated by this proposal from people who, in fact, are working in the program who feel that they are accomplishing a great deal, that they are serving people who have needs. And I expect that we will hear more about this before this is over. There is a fair amount of support for this program, be it training or income support, whatever you might want to call it. It is obviously not training in the true sense, but it has provided some very important services to people.

Have you or any of your personal staff ever visited any of these centers, either in this area or in your home States to see what these people do?

Mr. ANGRISANI. To date, I have not and, quite frankly, now I would probably be afraid to. [Laughter.]

WORK INCENTIVES PROGRAM

Senator RUDMAN. Well, you might use a pseudonym, I guess, and wear a wig. But I have and I think you would find that they do a pretty good job. I think it's something that ought to be looked at.

The WIN program, the work incentive program, was the subject of a very extensive conversation here yesterday between the Secretary and Senator Levin. I would simply ask you if you want to make any comments at all about your proposals in this area at this time?

Mr. ANGRISANI. Yes, I would. Thank you. Two things. We received a draft copy of the GAO report which we are looking at right now and will respond to officially. I have asked my staff to look at it and they provided a summary which I have with me and I would just like to read one sentence of that summary, which substantiates my position with regard to supporting the elimination of the WIN program. This particular sentence reads: "No statistically significant relationship was found between participating in WIN training and maintaining employment and getting off AFDC."

If that is, in fact, ultimately the conclusion that we come to when we respond to the GAO survey, I think that it provides substantial reason for doing exactly what the administration is doing, which is eliminating the WIN program as an ineffective program. Unfortunately, in this time of tight resources and constraints, we need to be investing our money only in those programs that we are sure will work.

Senator RUDMAN. Well, I won't go over the GAO report here. We have a lot of facts from that report that the staff has extracted. But I think, looking at them, one of the most damning conclusions is this one: "No statistically significant relationship was found between participating in specific WIN components, such as classroom training and on-the-job training and work experience and achieving economic self-sufficiency."

I mean, that is a very damning conclusion, if it is, in fact, true.

Mr. ANGRISANI. Yes, sir, that is our position as well. It certainly does justify the position you take.

We have other questions on that program which we will give you for the record.

Mr. ANGRISANI. Thank you. We will respond to them.

EVALUATION OF TRAINING PROGRAMS

Senator RUDMAN. Last year during similar hearings, a number of questions were asked about evaluation results concerning employment training programs. At the time, our chairman, Senator Schmitt, said he hoped you would have more systematic results by now. What can you tell us about which types of training programs work best, for whom, and at the least possible cost?

Mr. ANGRISANI. Mr. Chairman, we feel that our evaluation capabilities have come a long way in the last year. And, as you know, in our new training legislation, we are stressing performance measurement activities more so than ever before.

Right now I am giving you more of a spontaneous reaction than a quantitative one, but I think I am probably in the ballpark. Probably our best programs are those programs where, in fact, we had minimal income maintenance activities going on in the programs and where we concentrated on training, whether it was in a contractor that was running a program with no stipends or wages, or whether it was in one of the prime sponsor areas, where there was similar emphasis.

I would say along that line, the on-the-job training mode of training activity was our most successful and classroom training fell in line behind that. Work experience, where wages and stipends are allowed, has not proven to be as effective, in our opinion.

Senator RUDMAN. Could you tell us what you propose to spend on research and evaluation of employment and training programs in fiscal year 1983?

Mr. ANGRISANI. May I ask Mr. Komarek to respond to that, sir?

Mr. KOMAREK. At this point in time, Mr. Chairman, we have no specific dollar plan for research and evaluation expenditures in 1983. As you know, we have proposed new employment training legislation for enactment for that year. Once we see the nature of that legislation and the amount of the appropriation accompanying that legislation, we would then consider the amount to spend for research and evaluation.

Senator RUDMAN. Well, wouldn't it be wise to put, and I think that I would be speaking the same approximate words that our chairman would be speaking if he were here this morning, wouldn't it be wise to place within the framework of that legislation a component for research and evaluation, and evaluation, in particular?

When you consider that what we have done in this country over the last two decades is to spend an enormous amount of money on all kinds of public works projects, training programs, work incentive programs, and whatnot—call them maintenance support, training, whatever you want to call them. And really, there is no base of information anywhere, unless we are looking at this latest GAO report on a particular program, that really tells us which worked and which didn't.

Don't you think if you are going to start with a brand new product, that you might want to have a method that was constructed early on to evaluate how well it worked so that you could at least satisfy yourself that it did or it didn't? Just because you think it is going to work, Mr. Angrisani, does not necessarily mean that it will.

Mr. ANGRISANI. We have made provisions in our Job Training Act legislation for exactly that type of activity. In addition to that, the performance measurement management feature would provide us with that type of evaluation, although you are exactly right, that in the past, that was not done properly and it's going to take a little bit of time to change the mentality to do just what you want.

So we agree with you and I hope that we have enough money in our program to do that.

I would like to say this, though, with regard to research in general and overall. We have sustained substantial cuts already in our research budget. I believe that we have cut it in half and I intend to cut it further. On the evaluation side, I would hope to strengthen it.

Senator RUDMAN. Might I suggest that, for the record, you try to amplify on that answer somewhat because I know that the chairman would like to see a more elaborate answer as to how you might plan to do that, because we think it is important.

Mr. ANGRISANI. OK.

[The information follows:]

FISCAL YEAR 1983 RESEARCH AND EVALUATION PLANS

Evaluation plans call for strengthening this program with significant efforts directed to assessment of early effects of major changes in the training programs replacing CETA. Specific activities would include development of a system to initiate tracking of a national sample of enrollees in the fiscal year 1983 new programs authorized by the 1982 employment and training legislation; carrying forward the ongoing long-term measurement of effects of decentralized training programs on postprogram earnings of earlier year's participants, and other analyses of participants' experience; using the findings of effects, develop measures of the cost effectiveness and cost-benefit relationships of the major types of programs; assessment of efforts to expand and improve private sector involvement in employment and training programs;. assessment of strengths and weaknesses of ongoing programs; and initiation of field assessment of major new administration actions, such as the use of block grants and/or expansion of State government role, efforts to improve quality of training, new workfare initiatives, or "enterprise zone" or other tax credit approaches to employment targeting.

Research and Development (R&D) efforts will be directed to planing in support of the new employment and training legislation. Work may include analysis of various aspects of improving and redirecting Employment and Training Administration (ETA) programs such as identification of models that can be adapted in different settings, enhancing the effectiveness of employment and training delivery systems and developing ways of maximizing the utilization of research findings relative to program operations. Research might also include limited studies dealing with macro-economic labor issues such as improving productivity growth, labor markets trends, development of enterprise zones, transition of AFDC recipients to private sector jobs, development and implementation of performance standards, continued work on skill shortages, and impact of new government policies on employment. If resources permit, limited experiments may be conducted concerned with selected types of training programs.

REAUTHORIZATION OF JOBS PROGRAM

Senator RUDMAN. Moving on very briefly to reauthorization of manpower programs, suppose the reauthorization process for employment and training programs gets bogged down and the new legislation is not passed by either House by the 10th of September. The Reconciliation Act requires an automatic 1-year extension of the old CETA program.

In that event, what recommendations do you have for continued funding of existing CETA programs?

Mr. ANGRISANI. Mr. Chairman, that's an extremely sensitive question which we were hoping that we would never have to look at. Right now, I am reviewing several options with Secretary Donovan and the White House on just what posture we would take.

I would have to say this: that philosophically, the administration's position is quite clear, that we don't believe that the CETA system, as it exists right now, was effective. We would have some very serious reservations about seeing, even if you were operating in a 1-year environment, a system like the current one continuing.

So my only response to you right now is that we are looking at a number of options and will be consulting with the Hill on those options. One thing is for sure: we would like to stay, no matter what happens, within the budget that we have submitted to you, which is, overall, $2.4 billion.

Senator RUDMAN. Is it accurate to state that you took a position yesterday, evidently, that you would recommend that the Hatch-Quayle bill, if passed, ought to be vetoed by the administration?

Mr. ANGRISANI. Yes, sir. Yesterday, Secretary Donovan, the Department of Labor, and the administration, submitted a letter to Senators Hatch and Quayle stating that we were disappointed that the consensus bill that we believed we had worked out with the committee was not going to be marked up Thursday, and that we felt it was most opportune to clarify the administration's position.

And in that letter, we said that there were certain principles that were contained in the Job Training Act of 1982, which was the President's bill, that would have to be adhered to for the administration to support any legislation that came out of that committee.

Therefore, in that regard, we made it quite clear that the bill that they were marking up Thursday was not acceptable to the administration and that if those principles that we outlined in that letter were not contained in any legislation that came out of the Congress, that a veto was a substantial possibility.

Senator RUDMAN. Would you oppose attempts to earmark a certain percent of overall authorized funding ceilings for specific programs, such as the Job Corps, for instance, if the Job Corps were authorized to get 3 percent of the overall total of $2.4 billion that would be guaranteed, $720 million, taking appropriations decisionmaking essentially away from the Appropriations Committee?

Mr. ANGRISANI. Yes; earmarking funds, in general, would not be the way we would like to go. We would like to evaluate each account on its own appropriations basis. As you know, we have a substantial cut proposed in the Job Corps program and we support that cut.

UNEMPLOYMENT COMPENSATION FOR EX-PSE ENROLLEES

Senator RUDMAN. I wonder if we might move on to some questions on reprograming of CETA funds.

Last year, the committee approved a $245 million reprograming request to provide unemployment benefits to terminated public service job enrollees. Recently, however, you made available data that showed that more than half of these terminated public job enrollees found other work.

Does this good performance record mean that you will not need the full benefit of that $245 million set-aside that we approved?

Mr. ANGRISANI. At this point, we think that we need to keep the money there for the simple reason that we anticipate benefits to be drawn over a 3-year period. As of now, I think we have used approximately some $51 million of the total, which is not a big portion. But probably, next year at this time, we would be in a better position to assess how much of the total was going to be drawn down.

Senator RUDMAN. So your answer is that we ought to leave it where it is for now.

Mr. ANGRISANI. I'll ask Mr. Lewis to respond to that. There's a technicality there.

Mr. LEWIS. Mr. Chairman, there would be a long period of time in which those eligible for drawing benefits might use part of the PSE qualifying employment in their base period. So that's why potential charges against that employment could extend for a longer period of time.

Moreover, we sense that the lower expenditure rate showing on our books is because we have a reporting problem with the States and we think they may not be charging adequately. It's still being charged to the FUBA account.

Senator RUDMAN. I see. All right. Incidentally, Mr. Angrisani, do you have a copy of that letter to Senators Hatch and Quayle?

Mr. ANGRISANI. We can submit one.

Senator RUDMAN. Submit one for the record. We would like to have it as part of the record of this hearing.

[The letter follows:]

April 20, 1982.

Hon. ORRIN G. HATCH,
Hon. DAN QUAYLE,
U.S. Senate, Washington, D.C.

DEAR SENATORS HATCH AND QUAYLE: We have received the bill that Senator Quayle plans to mark up in his subcommittee Thursday. We are extremely disappointed that is is not the President's bill, the Job Training Act of 1982, or the consensus bill agreed to by the administration and Senator Quayle on March 29. Because we entered into negotiations for a concensus bill at your request and came to agreement on such a consensus bill on March 29, we cannot understand why this new bill has been selected over the consensus bill.

As a result of this unexpected turnaround, I think it is best to state the administration's position with regard to the markup and job training legislation in general. The bill you plan to mark up is not acceptable to the administration in that it contains significant departures from the Job Training Act and from the consensus bill, in the area of wages, allowances, stipends, and to some extent from the delivery system. President Reagan has expressed his desire for an effective and efficient job training program to replace the ineffective and expensive CETA program which expires this year. As a result, any program that the Congress proposes should incorporate the principles of reform that the President is proposing in the Job Training Act. Those principles are:

No wages, stipends, allowances or income support by another name should be paid to participants in a training program. There is strong evidence to support the position that participants can be trained without income support. As a guideline the President believes that 75 cents of every training dollar should be spent on training. The remaining 25 cents can be used on administrative expenses and cost reimbursable expenses like transportation, meals, and daycare. Under the current CETA system only 18 cents of every dollar is spent on training. Clearly the President wants a training program and not another income support program like CETA.

The delivery system should adhere to the principles of new federalism and give the States, through block grant funding, the paramount role in running the overall training program. The delivery system should also give the private sector through local private industry councils the ability to plan program activities as well as to coordinate the local delivery of services. We believe this will insure a simplified, tailored approach to training that will give participants the best chance of securing permanent jobs in the private sector. Under the current CETA system there are 476 prime sponsors and 55,000 contractors that serve as a delivery system. The system has proven to be unmanageable and only 15 percent of participants have traditionally found private sector jobs.

The activities in any bill should not cost more than the $2.5 billion allocated in the President's budget. Under the current CETA program $53 billion has been spent in 7 years with very little effect on the employment/training needs of those served. If 75 cents of every budget dollar is spent on training, there is sufficient money in the President's budget to serve the disadvantaged. In addition, expensive public service jobs or subsidized public sector training should be prohibited.

The administration believes these principles and the remaining principles expressed in the President's bill, the Job Training Act, are critical to conducting a successful job training effort. We do not believe CETA has been successful and will not support any legislation that resembles CETA or fails to incorporate the principles set forth in this letter.

Sincerely,

RAYMOND J. DONOVAN.

REDUCTION OF TRAINING ALLOWANCES

Senator RUDMAN. Last year's Senate report urged you to consider reducing training allowances in order to maximize the number of employment and training opportunities within a limited level of resources. To what extent does your proposed new training bill deemphasize stipends for participants?

Mr. ANGRISANI. Well, as you know, that is the primary point of contention right now in our position relative to the other pieces of legislation. We basically have no provision to pay wages and we have a 10-percent cap on supportive services—transportation, lunch, day care activities.

Quite frankly, Mr. Chairman, our bill provides for 75 cents of every dollar appropriated by this Congress going to training, which we believe is the ultimate goal with any legislation that should be passed, as compared, sir, to 18 cents on every dollar that was going to training activities under the old CETA program.

Senator RUDMAN. Well, it's really your view that by reducing allowances, you are going to attract, I assume, a more highly motivated person into the program. That would be your logic.

Mr. ANGRISANI. We could serve more people and accomplish that as well.

Senator RUDMAN. The only further point on that is, is there any provision whatsoever tightly and carefully drawn that would provide stipends for those who, essentially, without them, would be totally unable to participate in the program?

Mr. ANGRISANI. No, sir. However, I should point out that the eligibility groups that we have targeted are not totally divorced from outside supportive services. AFDC recipients are one of the groups that we plan to serve and, as you know, they do draw welfare benefits.

The other group that we plan to serve is disadvantaged, out-of-school youth between the ages of 16 and 25. And with this group, we intend to try to use the on-the-job training mode as the primary vehicle for training. When they are in an on-the-job training program, they, in fact, are drawing a wage.

So we would hope that, in actuality, a rather small percentage of the people that will be participating in the program will be divorced from some sort of supportive wage from another means. There are an awful lot of programs in existence today that accomplish income maintenance without it being incorporated into our training proposal. That's our belief.

JOB CORPS REDUCTION

Senator RUDMAN. The Job Corps is considered to be generally very successful. With that in mind, explain your rationale for cutting it to $387 million from the CR level of $585 million.

Mr. ANGRISANI. We have said that the Job Corps is very successful. I should point out, and we always try to point out the other side of the equation, that it costs about $13,000 to $14,000 a slot per year, which means that there are plenty of resources that are locked into being sure that it's successful.

Our basic rationale is that, No. 1, in an overall budget sense, we need to establish the cuts in the Federal Government in general. And I personally support the fact that the social services budgets have grown rather drastically over the last 10 years and that these cuts are well called for and very timely.

So that is the primary rationale behind cutting all of our programs. Last year we sustained major cuts in our CETA program and this year it's just the Job Corps' turn.

Senator RUDMAN. I understand your answer, but I don't necessarily agree with it. Here we have something that works and it works in a specific area. It works in an area that your new legislation is addressing—the training area. Why cut it? Sure, we have to cut the Federal budget. We all know that. But why cut something that is highly successful.

You know, I haven't been here that long, but I have heard very few things around here that anybody called highly successful. In fact, the adjectives that are used are quite to the contrary.

So if we, in fact, have something that is successful, why not go with it? Why cut it?

Mr. ANGRISANI. Well, I think the cost per participant or per slot is one of the things that bothers us the most. We have said that in the process of establishing these cuts, we were going to try to do business a little bit more efficiently and lower that cost so that we could, in fact, smooth over the effects of that drastic a cut.

But I guess, on one hand, we are saying that it is highly successful and on the other hand, we are saying that it is too expensive.

Senator RUDMAN. Well, maybe that is why it is successful, Mr. Angrisani. Maybe it costs that kind of money. I understand that we have a placement rate of 90 percent. Is that accurate? That is the figure that the staff furnishes to me.

Mr. ANGRISANI. Yes, sir, that is the number they use.

ANALYSIS OF JOB CORPS PROGRAM

Senator RUDMAN. Well, you know, we could have some programs that cost $6,000 or $7,000 each and we can have a whole proliferation of these programs, or $5,000 each with nothing, and we can place 20 percent of the people and say, well, at least they didn't cost very much.

Sure, this costs a great deal. Maybe that is why it has a 90 percent effective rate. Have these figures been brought to the attention of OMB, this particular program, comparing its success rate with its cost?

Mr. ANGRISANI. Yes; they have been brought to OMB's attention and OMB has asked us to provide a formal analysis from that.

Senator RUDMAN. A formal analysis, which means what?

Mr. ANGRISANI. The Reagan administration has never done an assessment of these numbers and they want to be sure that we totally subscribe to them based upon our own analysis. As of right now, we certainly are supporting those numbers.

Senator RUDMAN. Well, when will this analysis be completed?

Mr. ANGRISANI. It will be a while, I suspect. Bob, how long?

Mr. JONES. I would expect late this fall.

Senator RUDMAN. Assuming that you found that the numbers were correct, that, in fact, it was 90 percent or higher, would you then be prepared to change your recommendation to the administration?

Mr. JONES. I don't think it is a question of just assessing the numbers. The agreement that is underway, and you will find that much of the Job Corps support system will agree with this, is an analysis not only of the reporting system, the numbers, and the relative outcomes, but also the costs question. There is substantial support within the Job Corps system itself that we can reduce the costs and probably buy a substantially greater, successful product for less of a unit cost.

So the issue, will we be willing to address what kind of output you can claim for the dollars that are invested, yes, that could be changed in the fall. And I suspect that the level of the cut may not be looked upon as drastic as it is right now if, in fact, that can be the case. And a substantial number of Job Corps contractors themselves would agree with that and support it.

So that effort will go on between now and the fall and we will all be making some rational judgments from that.

Senator RUDMAN. What you are essentially saying to us is that if, in fact, your own analysis indicates that even with that high cost, the high success rate appears to continue to be probable, that you may evaluate what you are suggesting. Is that your position here today?

Mr. JONES. I would say that that analysis would form the basis for future decisions on everyone's part.

Senator RUDMAN. Well, I just have a feeling that there are many here that are probably going to say that that is putting the horse behind the cart, that you ought to get the analysis completed before cutting this thing back, not impinge on the program. And I would expect that for a program that is 15 years old and has been studied over and over again, that you will find very little support.

We want to go with the administration. I certainly do, and I know that most members on my side of the aisle want to go with most of your recommendations. But, quite frankly, I get the feeling sometimes, Mr. Angrisani, and I am not saying this about your Department; I am saying this generally about the grand strategy of cutting some of these things, that things are taken as a large moving target and shots are taken, and wherever they appear to hit, things are done. Some of the very top internal analysis that ought to be done on the programs has not been done, because there is no justification for this program. I don't care if the cost is $13,000 or $14,000.

I have some familiarity with this program and how it works and it is one of the few Government programs that I see that works well.

Incidentally, if we were to adopt your recommendation, which Job Corps centers would you close and in which States?

Mr. ANGRISANI. I suspect that that would be the subject of some very extensive negotiations on just what centers they would be. In terms of the evaluation issue that you talked about earlier, probably our best evaluation capability is in the Job Corps. We would look to cut the programs that were just not performing. So we would use that methodology. Which ones they were specifically, I couldn't tell you.

Senator RUDMAN. Well, we can move on from that. I expect we will talk a great deal more about that before we finish this appropriation.

Mr. ANGRISANI. I suspect so.

SUMMER YOUTH EMPLOYMENT PROGRAM

Senator RUDMAN. Turning to summer jobs, you propose eliminating the existing summer youth jobs program and consolidating it into a block grant. At the $1.8 billion level that you recommend for block grant funding, how many summer youth jobs do you estimate will be provided, compared to the 700,000 to 800,000 jobs this summer?

Mr. ANGRISANI. We have proposed the elimination of summer youth jobs as they exist right now in total. What we have said, in our Job Training Act, the two priority groups, AFDC and out-of-school age, between 16 and 25, those out-of-school youth between 16 to 25 would be in a training program throughout the entire year, probably.

So, really, we are talking about a change of emphasis from the summer youth program here to a training program that would basically deal with the same constituent group, but in a different way.

Senator RUDMAN. How many different jobs would it provide? How many training slots?

Mr. ANGRISANI. Well, our total program provides about a million. So figure somewhere in the neighborhood—I'm taking a rough guess—if they break about 50/50, maybe 300,000 to 400,000, maybe more.

Senator RUDMAN. So by your figures, roughly, we would have maybe 400,000 less slots, be they training or jobs or whatever, for young people who have enjoyed those positions in the past.

Mr. ANGRISANI. That is correct. If I may, Mr. Chairman, we are talking about a substantially different type of program.

Senator RUDMAN. Oh, I understand that. We are talking about a different kind of program. But we are talking about people. We are talking about 800,000 people who are currently in a particular kind of a program. Maybe your proposal is a good one. But the fact is, by your statement, there are going to be about 400,000 of those people who are not going to be in your program.

Mr. ANGRISANI. That is correct.

Senator RUDMAN. So they are going to be doing something else. And with the unemployment rate, particularly among the young people, teenagers, black teenagers, I really seriously wonder what they are going to be doing this summer or next summer.

Mr. JONES. I would point out, Mr. Chairman, that the slots that you are talking about, that we would be providing in a basic block grant are year-round slots. There will be created a number of opportunities for serving youth and a major part of the program will be dedicated to serving youth on a year-round basis.

So the issue is, do you sacrifice that for 8 weeks of income maintenance and is there any benefit? I think the studies will show you that there is absolutely no benefit derived from that experience other than an income maintenance.

TRADE ADJUSTMENT ASSISTANCE

Senator RUDMAN. Well, I expect we will see, hopefully, not too vividly, how that works, if it is adopted.

I want to move to trade adjustment assistance for a moment.

Have you shifted the emphasis in trade adjustment assistance for workers program from income maintenance to retraining and adjustment?

Mr. ANGRISANI. That is what we are proposing in our plan.

Senator RUDMAN. How much do you expect to spend on retraining in fiscal year 1983?

Mr. ANGRISANI. In our training proposal, we allow for 10 percent of the block grant in any State to be used as a flexible entity. In a State where there is a significant dislocated worker program, it could be as much as 15 percent.

So on a $1.8 billion block grant program, technically, if everybody used their money for dislocated worker problems, it could be $180 million and up. Of course, that is not going to happen. But let me point out that my rough guess and my estimate is that probably, somewhere in the neighborhood, if that flexibility is provided to the States, it may be upwards of $50 million and more that could be used for dislocated worker programs.

That is a very significant number in that, in 1982, all we are going to spend is $25 million. And prior to that, the most that was ever spent was $7 million.

I guess the only way that I can answer your question is to say that I think, at the minimum, twice as much as is currently being spent will probably be spent if our program is adopted.

BUREAU OF APPRENTICESHIP AND TRAINING

Senator RUDMAN. Moving to apprenticeship services, the Bureau of Apprenticeship and Training coordinates private sector, local governmental apprenticeship training efforts and registers such programs and certifies graduates and journeymen.

Can these responsibilities be delegated to the States and how?

Mr. ANGRISANI. Largely, they are delegated to the States. We have a staff of some 300 people plus, I think, nationally that are salesmen to cultivate opportunities. The bulk of the apprenticeship work is done right in the States.

PRIVATE SECTOR PROGRAMS

Senator RUDMAN. Under the private sector initiatives program in CETA, what initiatives, what progress have you been making in getting the private sector more involved in taking those initiatives?

I know we discussed that at a hearing here last year.

Mr. ANGRISANI. I think that some very strong progress has been made, and quality progress, not the type of progress that lends itself to political expediency. We have supporting our Job Training Act legislation the Chamber of Commerce, the Business Roundtable, the National Association of Manufacturers, and the National Alliance of Business, which are four primary business organizations here in Washington.

I point to that for the purpose of showing that there is some unanimity among the business organizations right now throughout this country that they need to get involved in job training and have asked for a major role.

That question was always posed in the sense of will the business community be interested in it? Do they want it? I think we can say that for the first time, they do want to be actively involved.

The only specific programmatic area I guess that we can point to is our title VII account. We believe that the title VII account has come a long way in the last few years. It has some problems like any other account. But most of the problems are related to a cumbersome relationship at the local level between the prime sponsor and the business community.

In our piece of legislation, we believe that we straighten that out very clearly. I see only good things from the business community in the area of job training because they know one thing. And this is why I think we have quality progress. They understand that if training is going to survive in this country, it is going to have to be institutionalized so that it weathers the storm of political changes and budget cuts, and it is going to have to become an institution in the private sector.

That is really the only hope for training that I know.

Senator RUDMAN. Have you seen strong evidence, Mr. Angrisani, so far in this past year of commitments of money or resources?

Mr. ANGRISANI. I think so. I think that we are learning a lot about what the private sector spends on training right now. I understand that some estimates are that the private sector in its own training programs spends close to $100 billion. I believe Chairman Nettler from TRW was cited as saying that before.

Senator RUDMAN. What was the figure?

Mr. ANGRISANI. Close to $100 billion.

Senator RUDMAN. Private sector training at this time?

Mr. ANGRISANI. Nationally. These numbers are not quantified, of course, but we are learning for the first time about the broad potential of the private sector with regard to training programs. And I think that if our legislation passes, the Federal Government will ultimately prove to be a catalyst in that whole process.

Senator RUDMAN. Well, I assume that that figure is as high as it is—I have seen some figures in the past that have looked at that and, of course, a lot of that component is so-called on-the-job training, which, of course, reflects payroll. That is legitimate, but I think the figure is a little misleading.

Let me ask you about the targeted job tax credit program. What has the impact been of that and are you going to continue to support that in fiscal year 1983?

Mr. ANGRISANI. Well, Secretary Donovan and the Department of Labor said that we would very much like to see the targeted jobs tax credit program be continued, and we have recommended that.

In terms of its impact, I think that it has been in existence for a couple of years now and I don't think there is anybody that would say that it has been a tremendous success and I have not heard anybody say that it has been a tremendous failure. I think the book is still open on it and we need to continue looking at that whole process.

Senator RUDMAN. But you do continue its support for this coming year.

Mr. ANGRISANI. Yes, sir, the Department of Labor has proposed that.

EMPLOYMENT SERVICE

Senator RUDMAN. The continuing resolution reduced the Employment Service from last year's level of 31,500 to 24,800. How many offices were closed as a result of this action and how many remain open?

Mr. ANGRISANI. I will ask Mr. Lewis to comment on the specific number. I would like to say this: That there was some confusion, obviously, because of the fact that the level actually dropped down to about 17,000 before the supplemental. So that the reflection of the number that are closed might not be an indication of what happened after the supplemental. But Bert, would you care to comment on that?

Mr. LEWIS. Mr. Chairman, according to estimates from the States, there was a net reduction of about 250 offices. In other words, there were some opening and closing during that period of time, as is always the case. And keeping track of how many offices there are and the locations is not something that we do on a monthly basis. There are somewhere over 2,000 offices.

Senator RUDMAN. Do you have any evidence that those consolidations in some of those local areas caused an impairment of service to the rural areas, causing people to travel great distances to get to these offices?

Mr. LEWIS. We don't have anything statistical. We have some hearsay reports that that could be the case. But I might add, in most of the situations I am familiar with, where an office in an area needed to be closed, the managers were very willing to set up what we call itinerant offices at general points to serve them 1 or 2 days a week with mobile staff. So the managers are trying to do as well as they can.

Senator RUDMAN. What ideas do you have for making that service more effective and to what extent has its efficiency really declined as the unemployment rate rises?

Mr. ANGRISANI. I would say, Mr. Chairman, we have a number of ideas, but I think that there is a very big issue on the table before we get to those ideas. Basically, the Employment Service is looking at a very, very big problem with regard to its finances in the entire Grants-to-States account. I had the pleasure of appearing before Congressman Natcher's House Appropriations Subcommittee and we went through the same thing. Basically, we are now, this year, drawing down on our cash reserves in that account rather drastically.

The reason for it is this, and we would appreciate your attention and help on this. It is that the FUTA tax that funds the Grants-to-States account which the employers in every State pay, basically has stayed at a constant level since 1977, when they had the last FUTA tax increase. There has been no infusion of general revenue into the account. So the percentage of general revenue funding level has stayed about the same.

But during this period of time, administrative costs, the salaries, the bricks and mortar, the costs of doing business, have been going up possibly about 10 percent a year, which means that we have had upward pressure on the cost curve while our revenue curve has stayed flat.

The end result: the continuous reduction of funds.

The problems with the Employment Service have to be dealt with at that level before we can get to the other issues that you have recommended or suggested. We see in the future the need for a different way of doing business. Right now, we are looking at some options there. I am not sure that the answer is putting more money into it, either. There are a lot of people that believe that there needs to be a better hook-up between the Employment Service at the State level with the other things that go on in the State.

So we are evaluating a number of options, but the big issue on the table for next year is the financing.

Senator RUDMAN. Well, it certainly needs to be looked at because I am sure you know these numbers better than we do. You certainly should. But there have been about 2 million jobs each year that have gone unfilled. They are nonagricultural jobs. Over 28 million over a 10-year period, that the Employment Service just was unable to fill. That does suggest a need for some review and revision of that program. And I agree with you—spending more money alone doesn't necessarily do it.

SUBMITTED QUESTIONS

We have a number of additional questions, detailed in nature, that we will ask you to answer for the record and return that at the time that you return the corrected hearing transcript.

Mr. ANGRISANI. We will.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

LACK OF SUCCESS WITH BLUE COLLAR WORKERS

Question: What evidence is there that the Employment Service has been ineffective in finding jobs for "Blue Collar" workers--those most in need of help during the current recession?

Answer: During the past year there was a decline in the number of "Blue Collar" placements through the Employment Service system due primarily to the economic decline in the manufacturing sector. Since Employment Service job openings generally reflect the state of the economy, at least in the "Blue Collar" sector, the lack of such openings makes it difficult to assist workers who desire to remain in their present occupation.

Question: What can be done to improve the performance of the Employment Service in finding jobs for "Blue Collar" workers?

Answer: To effectively assist workers in long-term lay-off situations requires more counseling services and training opportunities to effectively accomplish job changes in the shortest possible time.

Self-help job finding activities such as job information services, job search workshops, and job finding clubs will also be emphasized to assist "Blue Collar" workers obtain employment.

FEDERAL LOANS TO STATES

Question: How much do the State unemployment compensation programs now owe the Federal government?

Answer: As of March 31, $7.8 billion, is owed to the Federal government from State unemployment compensation programs.

Question: How much does each debtor State owe the Federal government?

Answer: As of March 31, the following amounts were owed:

Arkansas	$ 64.0 million
Connecticut	292.9
Delaware	57.8
District of Columbia	44.8
Illinois	1,693.3
Kentucky	95.7
Maine	24.5
Michigan	1,563.0
Minnesota	191.9
Missouri	89.8
New Jersey	562.3
Ohio	992.7
Pennsylvania	1,646.9
Puerto Rico	72.5
Rhode Island	105.0
Vermont	33.1
Virgin Islands	3.6
West Virginia	104.8
Wisconsin	126.7

Question: How much of this debt will be repaid in the next five fiscal years?

Answer: Projected repayments, including repayments for new loans and existing loans for the next five fiscal years are as follows:

FY 1983	$	0.64 billion
FY 1984		1.18
FY 1985		2.14
FY 1986		2.42
FY 1987		2.36

Question: How much more will the States borrow in each of the next five fiscal years?

Answer: Projected new loans for the next five fiscal years are as follows:

FY 1983	$	5.13 billion
FY 1984		3.32
FY 1985		2.00
FY 1986		1.02
FY 1987		.50

Question: How much interest will the States pay on new borrowing in each of the next five fiscal years?

Answer: Projected interest payments made by the States are as follows:

FY 1983	$	0.62 billion
FY 1984		1.06
FY 1985		1.27
FY 1986		1.24
FY 1987		1.07

Question: How will the States finance the payment of interest charges?

Answer: The exact method of financing the payment of interest charges is left for the State to determine. The language of the law is clear in that a State may not use funds from the existing UI funding mechanism. A State may apply an additional surcharge on employers, provide funds from State general revenues, etc.

Question: Will the interest payments be credited to the Federal General Fund or the Unemployment Trust Fund?

Answer: The law provides that all interest payments go directly to the Federal General Fund.

Question: Should the interest payments be credited to the Unemployment Trust Fund?

Answer: The law requires that the payments go directly to the Treasury General Fund.

EXTENDED BENEFITS

Question: How many States do you estimate will be paying Extended Benefits in fiscal year 1982?

Answer: Presently, 33 States are paying Extended Benefits under the current set of economic assumptions and we do not anticipate any more States triggering "on" this year.

Question: Does your projection for additional Federal Fund Advances include all anticipated costs for Extended Benefit payments?

Answer: Yes, our projections include all anticipated costs for extended benefit payments.

UNEMPLOYMENT INSURANCE

Question: In a study entitled "Unemployment Insurance: Need to Reduce Unequal Treatment of Claimants and Improve Benefit Controls and Tax Collections," the GAO recommended equal treatment of claimants and uniform program administration among jurisdictions. To achieve these objectives, the GAO called for establishment of uniform eligibility standards and methods for determining benefit amounts, greater control over overpayments, and improvements to recover overpayments. What steps, if any, has the Department of Labor taken to implement these recommendations?

Answer: The Department has taken positive measures to improve State performance with respect to control and recovery of overpayments. Criteria have been established to evaluate State performance. Regional staff of the Unemployment Insurance Service is working closely with State staff to implement these guidelines. Where appropriate technical assistance is also given by the national office.

The Department, through the Employment and Training Administration and the Office of the Inspector General, has developed a set of recommendations that include a requirement that all States require quarterly reporting of wages by employers in order to maintain a regular cross-match of wages and benefit payments, to detect overpayments.

In addition, the Department has instituted a system of random audits of State claims as part of its regular review of the benefit payment process and tax collections.

Since the date of the GAO report (April 5, 1978) several changes have been made in the equally shared Federal-State Extended Benefit (EB) program, with respect to uniform eligibility. Standards have been instituted into Federal law which must be met by State laws in order for States to qualify for matching reimbursement.

A State law must now have a waiting period of at least one week in order to qualify for 50 percent reimbursement for the first week of EB payment to each claimant. A State may choose not to meet this requirement. In any such case the State must bear the full cost of the first payment in an EB claim for all claimants.

There are several additional requirements which a State law must meet in the Federal-State Extended Unemployment Compensation Law of 1970 (as amended) in order to qualify for the 2.7 percent offset credit for employers under the Federal Unemployment Tax Act (FUTA). Failure of State law to meet any of these requirements would result in all employers in the State being required to pay 3.4 percent FUTA tax to the Federal Government in addition to their State liability under the State unemployment compensation law. These requirements include:

- Suitable work and active search for work. The State law must provide that EB claimants make an active search for work and accept any suitable work which an individual can perform and which pays at least the minimum Federal or State minimum wage, as applicable.

- An individual who has been disqualified under a State claim for discharge for misconduct or voluntary quit may not receive EB relating to the same claim for benefits unless the disqualification has been satisfied under a State requirement for new work and subsequent layoff for lack of work.

- An individual disqualified for EB under the suitable work actively seeking work requirement may not again be eligible for EB until he has served a disqualification period of four weeks and has had new work in which he earned at least four times the amount of his previous weekly wage.

- No individual may be eligible to receive EB unless during his prior State base period he had 20 weeks of full-time work or the equivalent in wages.

Question: What problems do you anticipate from implementation of a national eligibility standard?

Answer: No decision has been taken by the Administration on the advisability of a national Federal eligibility standard on State benefits, as distinguished from extended benefits, where there is a specific and significant Federal financial participation.

SIZE OF UNEMPLOYMENT LOANS

Question: How many States have outstanding unpaid Federal loans, totaling what amount?

Answer: Sixteen States, D.C., Puerto Rico, and the Virgin Islands have outstanding loans as of March 31, 1982 totaling $7.8 billion.

Question: Which States have submitted additional loan applications for what amounts?

Answer: State loan applications for April, May, and June are as follows:

(In Thousands)

State	Loan Amount
Michigan	$ 186,000
Missouri	25,000
Illinois	95,000
Ohio	207,064
Wisconsin	18,367
Minnesota	25,000
Kentucky	49,000
Pennsylvania	85,000
New Jersey	35,000
Arkansas	3,000
West Virginia	15,000
Iowa	20,000
Totals	$ 763,431

Question: Which States have made initial overtures that they may seek Federal loans, for what amounts.

Answer: The only other State that has indicated it might borrow this summer is Indiana and no estimate of the amount of the loan has been received.

THE PENSION OFFSET

Question: How can a "retired" person receive unemployment compensation in view of the rule that program recipients are supposed to be able to work and available for work?

Answer: As indicated in the question, all State laws do require that an individual, as a condition to receiving benefits, be able and available for work. Most, but not all, State laws require that an individual demonstrate that he is actively seeking work. Generally, State laws define or State agencies interpret "available for work" to mean, at least early in an individual's spell of unemployment, work similar in nature and wages, to his most recent job, and in all cases, work which he is physically able to perform. While all States would construe voluntary retirement to be a voluntary quit, subject to disqualification, involuntary retirement at any age would be construed as an involuntary separation equivalent to layoff for lack of work. If an individual receives a pension but meets all other requirements, this may, under some State laws result in a reduction of the weekly benefit amount by all or part of a pension. However, receiving a pension would not constitute an automatic bar to eligibility.

Question: Why does the Administration oppose repealing the pension offset to Unemployment Compensation?

Answer: The 1980 modification to the Federal requirement for pension deduction applies only to a pension which has been earned from, or contributed to, by the same base period employer whose unemployment compensation taxes have established the individual's right to benefits. We do not believe the same employer should be required to pay twice for the same wage loss.

Question: How much would repealing the pension offset cost?

Answer: While it is difficult to estimate the costs of repealing the pension offset because individual States may inact varying provision of their own a rough estimate on the impact in FY 1983 would be an increase in outlays of $600 million.

Question: Is the cost really a net cost to the Federal unified budget or does it merely mean that the States must either cut benefits elsewhere and/or increase unemployment taxes by an equal amount to finance this change?

Answer: The final effect of the unified budget would depend on the action taken by the State. If the State were to take no other action then there would be an increase in outlays and thus net lost to the unified budget. If the State were to take an offsetting action such as discussed in the question there may in fact be offsetting entries and thus no impact on the budget.

Question: Since the Administration has proposed repealing the retirement test in the Social Security Old Age program, does it make sense to continue reducing Unemployment Compensation by as much as the prorated Social Security benefit? Would not the Administration's position treat older workers receiving Social Security unequally compared to younger workers because the older workers would receive lower Unemployment Compensation benefits?

Answer: States are required to reduce unemployment compensation benefits by one half of the Social Security benefits, that proportion of the cost of the Social Security benefit based on the employer's tax. Any deduction of additional proportion of the Social Security benefit is based solely upon a decision of the individual State and not upon a Federal requirement. An individual who is receiving both Social Security and Unemployment Compensation benefits is receiving payment simultaneously from two governmental entitlement programs. Except in those States where the reduction is greater than 50 percent of Social Security, by State decision, the individual's combined benefits are greater than the amount a younger worker is receiving from Unemployment Compensation alone. Where the entire amount of Social Security is deducted, the older worker still receives a combined benefit that is equal to the Unemployment Compensation benefit paid to the younger worker.

UNEMPLOYMENT BENEFITS FOR FEDERAL WORKERS

Question: What additional amount do you estimate will be needed for unemployment benefits for laid off Federal workers?

Answer: Total projected benefit payments to former Federal workers including Postal employees are estimated at $330 million in FY 1982 and $245 million in FY 1983.

Question: How many Federal workers do you estimate will be fired or furloughed in Fiscal 1982? Fiscal 1983?

Answer: Due to the changing economic condition and the lack of historical experience, no firm estimates are available on firings or furloughs for Fiscal Years 1982 and 1983.

Question: Provide a chart for the record indicating additional Grants to States for UI and ES, as well as Advances, and overall trust outlays, for each 0.1 percent increment of unemployment, from 8.5 to 9.5 percent averages in fiscal 1983.

Answer: The Information Follows.

	Additional Outlays above President's Budget ($ millions)			Outlays per 0.1% Increment in Unemployment ($ millions		
	8.5	9.0	9.5	8.1-8.5%	8.5-9.0%	9.0-9.5%
Grants	60	141	228	16	16	17
Advances	1,133	3,206	5,898	298	415	538
UTF Outlays	2,282	5,581	9,241	601	660	732

UNEMPLOYMENT INSURANCE

Question: How much more would it cost in fiscal year 1983, if Congress repealed last year's Reconciliation Act provisions which raised the State Extended Unemployment Benefit "trigger" and excluded certain unemployed persons from the calculation of the insured unemployment rate? Indicate for the record the estimated impact on overall unemployment benefit outlays, as well as for the Federal advances appropriation.

Answer: Repealing those two provisions of the Reconciliation Act would result in an increase of $2.77 billion in benefit outlays for FY 1983 based on the economic assumptions in the President's Budget. Advances would increase by approximately $1.5 billion in FY 1983.

TRUST FUND AVAILABILITY

Question: What do you estimate will be the remaining Trust Fund availability for administrative costs in fiscal year 1983, based on budget request levels?

Answer: The FY 1983 beginning balance in the Employment Security Administration account will be $350 million. The ending balance is projected at $160 million.

Question: Provide a table for the record detailing Trust Fund availability, for each of fiscal year 1982 and 1983.

Answer: The Information Follows:

STATUS OF ADMINISTRATION ACCOUNT (ESAA)
FY 1983 President's Budget
(Dollars in Billions)

	FY 1981	FY 1982	FY 1983
Income 1/	---	2.117	2.216
Grants Limitation	---	2.107	2.048
State Grants	---	2.283 2/	2.323
UI	---	1.541	1.605
ES	---	0.742	0.719
Federal Administration	---	0.064	0.083
Balance (end of year)	0.580	0.350	0.160

1/ Net of refunds and transfers to EUCA and FUA; includes interest.
2/ Outlays.

Question: If available trust funds turn out to be insufficient to meet recommended appropriations, what are the pros and cons of using general revenues to make up the difference, as opposed to waiving the legislative ceiling on trust fund availability.

Answer: The Administration believes that only funding from the FUTA should be used to finance administrative costs, (with the exception of the three percent general revenue funding of the Employment Service).

IMPACT OF EMPLOYMENT SERVICE

Question: It has been argued that the Employment Service makes very little difference, since it tends to place people who would find jobs eventually anyway. Is it valid to cite the fact that the Employment Service places more people in jobs when the economy is doing well, and less when the economy deteriorates, as proof that the Employment Service makes very little difference in how many people find jobs?

Answer: It is important to note that the latest Bureau of Labor Statistics (BLS) survey for March 1982 show that 24 percent of the unemployed use the Employment Service in looking for work. An earlier BLS study showed that most people, 75 percent, obtained employment on their own through friends and relatives, gate hires, and through newspaper ads. Job seekers obtaining jobs through the Employment Service have ranged from five to 15 percent of all job openings.

Even in periods of significant economic downturn, the Employment Service locates and fills a substantial number of job openings. For example, in FY 1981, with the unemployment rate nationally at 7.6 percent, close to six million placements were made. The relationships between job service performance and the economy (using the unemployment rate as a proxy) indicates that most job service productivity decreases are not as steep as is the decline in the unemployment rate. See following table:

	FY '75	FY '74	% Chge.	FY '80	FY '79	% Chge.	FY '81	FY '80	% Chge.
New & Re-new.*	15.0	13.3	13.0	16.6	15.3	8.6	15.8	16.6	-2.4
Ind. Pl.*	3.1	3.3	-5.9	4.0	4.5	-10.2	3.6	4.0	-9.0
Placement Trans.*	5.9	6.7	-12.0	6.0	6.7	-10.4	5.5	6.0	-6.3
Openings Rec'd.*	7.9	9.9	-19.9	8.1	9.4	-13.5	7.3	8.1	-8.0
Unemployment Rate	8.5	5.6	51.8	7.1	5.8	22.4	7.6	7.1	7.0

*Performance figures are in millions.

EMPLOYMENT SERVICE STATE ALLOCATIONS

Question: How are Employment Service funds currently allocated to States?

Answer: In FY 1981 the ES formula held States harmless at 98 percent of their prior year allocation. The remainder of resources for formula allocation were based on placement performance measures in which States were compared to national productivity levels and also compared to their own prior year performance. For FY 1982 the Employment Service experienced a 17 percent staffyear reduction.

Use of performance measures was suspended and this reduction was applied on an across-the-board basis from the prior fiscal year.

Question: What portion of State Employment Service allocations are based on performance? How is performance measured?

Answer: For Fiscal Year 1982, performance was not a factor in the allocation of resources. For each of Fiscal Years 1980 and 1981, approximately two percent of the resources were allocated on the basis of performance. The unit of measure was the number of individuals placed per staffyear worked.

Question: Does emphasis on placement rates, as a measure of performance, serve as a disincentive for the Employment Service to coordinate its efforts with CETA prime sponsors, who traditionally serve disadvantaged and hard-to-place workers?

Answer: For Fiscal Year 1982, performance was not a factor in the allocation of resources and in each of the Fiscal Years 1980 and 1981 only two percent of the allocation was based on performance. Therefore, for the most current three fiscal years, the level of resources used for performance rewards were relatively small. On this basis, we do not believe the allocation process served as a disincentive for Employment Service/CETA coordination.

ADVANCES: DEGREE OF URGENCY

Question: Which States are in the most serious trouble with respect to their unemployment trust funds?

Answer: Michigan, Illinois, and Pennsylvania with loans exceeding $1.5 billion each may well be considered to be in serious trouble. Connecticut has had loans outstanding since 1972. Rhode Island has the second largest outstanding loan in relation to total covered wages after Michigan. Ohio with the fourth largest balance of advances has borrowed all of this in 1980, 1981 and 1982. Employers in eleven States currently are paying additional Federal taxes, i.e., loss of offset credit of 0.6 percent (0.6 percent (0.7 for Connecticut) because of outstanding loans that have not been paid off and have been outstanding since 1975 or earlier.

Question: How many of these States do you feel have been irresponsible in not either raising taxes or curbing benefits to avoid long-term deficits in their unemployment trust fund balances?

Answer: Most of these States, we feel, could as a State government, have done more in strengthening their trust funds. In many cases a governor, a State agency and/or a legislature have attempted to take appropriate action but have been unsuccessful in this attempt.

Question: What further actions might be taken by the Labor Department to discourage States from relying on Federal loans year after year, instead of taking steps to put their State trust funds in balance?

Answer: We believe that the situation is not one that calls for further action but rather we need to permit the provisions of present law to have an opportunity to work.

The present basic loan repayment provisions were adopted as part of broad amendments to the Federal unemployment compensation laws in 1970. They provide for an orderly method of recovering outstanding loans by progressive reductions in an offset credit under the Federal Unemployment Tax Act. We believe that had these provisions been permitted to operate in the mid-seventies, States would have moved promptly to improve funding under their State laws or the reductions already specified in Federal law would have produced a significant volume of repayment.

Instead, Congress initiated first, a three-year deferral of the operations of the repayment mechanism, and then, an additional two-year deferral, postponing for five years, during which States should have been rebuilding their trust funds, any Federal encouragement to do so. Many States took the tough actions needed to move toward solvency while others, however, continued to wait for some kind of Federal bail-out.

UNEMPLOYMENT INSURANCE

Question: The General Accounting Office (GAO) in its report, "Unemployment Insurance -- Inequities and Work Disincentives in the Current System," recommended several solutions to treat recipients more equitably and create better financial incentives to work. The GAO recommended including unemployment compensation in taxable income, reducing unemployment by retirement income; and establishing a uniform methodology for determining compensation. What is the Department of Labor's view of this report?

Answer: The question of taxing UI benefits is a matter of tax policy and should be referred to the Secretary of Treasury. Regarding pension reduction, it is our position that the present pension reduction requirement is a fair and reasonable one: State UI laws must provide reduction of UI benefits by that portion of pension for which the base period employer has contributed. Also included is 50 percent of primary Social Security and Railroad Retirement benefits, excluding that portion for which the worker has contributed. States may, at their own option, go beyond these limits in deduction requirements.

The Administration has taken no position on the advisability of establishing a uniform methodology for determining compensation.

Question: What additional or alternative steps would you recommend to treat recipients more equitably and create incentives to work?

Answer: We believe that most effective administration of the work test occurs when there are bona fide job openings in the community. As the economy improves as a result of the economic growth program of the Administration three results should be achieved: (1) many workers now on layoff will be called back to work, (2) other individuals will find it much easier to find new work, many by the assistance of the State employment service, and (3) those who wish to avoid work will be disqualified as a result of referral to available job opportunities.

EFFECTIVENESS OF EMPLOYMENT SERVICE

Question: To what extent does the efficiency of the ES decline as the unemployment rate rises?

Answer: There are two phenomena which are important in considering the relationship between Employment Service productivity and the unemployment rate. As unemployment increases, applicant traffic increases and job openings from usual sources decrease. This means that Employment Service staff must spend more time with applicants and more time developing new sources of job opportunities. The result, historically, has been that Employment Service placement productivity measures have dropped when unemployment has risen. This relationship is not surprising, given the combination of increased applicant workload and greater difficulty in obtaining job openings.

Question: What ideas do you have to make the Employment Service more effective?

Answer: The Department's principal emphasis in making the Employment Service more effective has been to clarify its mission and reduce "overhead" expenditures. In addition, the Department has taken several steps to relieve State employment services from demanding procedural and reporting requirements. Coupled with these efforts, the results of several promising "demonstration" programs which tested improved approaches to applicant management are being reviewed for national distribution to State Employment Security agencies.

Examples of overhead reduction include suspension of ES maintenance of the occupational classification system and elimination of apprenticeship information centers.

Examples of "paperwork relief" include general reduction in reporting requirements and proposed waiver of administrative procedures contained in the ES Regulations. Examples of demonstration projects results and technical assistance are development of a "self-application" process to reduce staff time spent on clerical intake processes, and development of industry marketing analyses to assist employer relations staff in locating job openings.

The Department will continue to explore other alternatives to improve the effectiveness and efficiency of the Employment Service program.

Question: What does the Employment Service do to find jobs for people when employers are listing fewer job openings?

Answer: In the face of fewer job openings, Employment Service staff have developed contacts with new sectors of the employer community, with emphasis on growth industries. Various marketing initiatives to identify areas with greatest potential for new hires by industry and occupation have also been tested and refined.

In addition, the Employment Service emphasizes counseling applicants on vocational change and referral to training for new skill development, as feasible and appropriate.

IMPACT OF EMPLOYMENT SERVICE STATE ALLOCATION FORMULA

Question: Has the Employment Service determined what effect its formula for allocating State grants has had on the types of job placements and other services provided?

Answer: The allocation formula process was first used in fiscal year 1975. Prior to that time funds were apportioned with little or no relationship to performance. The resource allocation /formula process represented a major policy shift which emphasized actual performance vs planned results. There is evidence to validate the premise that when allocations are based on past performance, performance tends to improve. The evidence is inconclusive as to whether the "policy" shift caused the improved performance or whether the actual allocations made the difference in performance. It is, however, safe to say that when the perception is created that a rewards/sanctions system is in place that performance tends to improve.

Question: Has this formula resulted in States overemphasizing short-term placements to the detriment of long-term placements?

Answer: Performance was not a significant factor in fiscal years 1980 and 1981 since only two percent of the resources available were allocated on the basis of performance. In FY 1981, about 68 percent of individuals placed were in long-term (over 150 days) jobs. The remaining 32 percent were placed in jobs lasting less than 150 days. In this connection, it is important to note that a number of higher-skilled, higher-paying jobs in the construction and trades occupations are not expected to last over five months duration because of the seasonal and project orientation of such jobs. Thus, we do not believe that the formula by itself has resulted in the emphasis of short-term, and thus by implication lower-quality jobs.

FINANCING OF EMPLOYMENT SECURITY AGENCIES

Question: Do you support enactment of a bill introduced recently by Senator Warner to give the States greater financial control over operation of local employment service offices?

Answer: The Administration has taken no position on this and similar bills. The subject is currently receiving careful study and evaluation.

Question: Do you believe States would be able to earn higher interest on investment of unemployment trust fund reserves, and do a better job collecting delinquent taxes, than the United States Treasury Department?

Answer: This is one of the contentions of Senator Warner's bill, I believe. As I indicated earlier, we are currently reviewing this bill and have taken no position.

Question: To what extent do you think administrative savings would occur by having the States collect all FUTA taxes, instead of splitting the job between the States and the Federal treasury, as under the current system?

Answer: The Administration is currently looking into this option, but have taken no position.

Question: Would accountability over operations of Employment Security agencies be improved by having each State collect taxes and decide the level of expenditures for administrative costs?

Answer: At this time, we have taken no position; however, this proposal is being given careful consideration.

Question: Summarize the differences between the current system, Senator Warner's bill, and similar legislation suggested recently by the governor of Oregon and highlight the pros and cons of each proposal.

Answer: The Information Follows:

Comparison between current system, Senator Warner's bill (S. 2360), and proposal of Governor Atiyeh of Oregon

CURRENT SYSTEM	S. 2360	OREGON PROPOSAL
I. ADMINISTRATION OF UNEMPLOYMENT COMPENSATION **AND EMPLOYMENT SERVICE PROGRAMS**		
United States Treasury Department **collects 0.7 percent net FUTA** tax. The 0.7 percent distributed:	. State may, at its option, **enter into agreement with** Secretary of the Treasury and Secretary of Labor under which State may act as agent of the Secretary of the Treasury and collect the FUTA tax and:	Change FUTA tax rate to 0.3 percent, with 2.9 percent offset credit to States' net FUTA tax:
. 0.45 percent available for State and Federal costs of administration		. 0.10 percent - permanent tax. (1) Pay Federal costs of oversight for unemployment compensation and employment service programs (2) Provide a Federal loan account
. 0.05 percent to extended unemployment compensation account (EUCA) - permanent tax	(1) Retain 0.40 percent of the FUTA tax, and 60 percent of any penalties collected with respect to FUTA, and	. 0.20 percent - temporary tax. to repay general revenue advances to EUCA.
. 0.20 percent intended to pay general revenue advances to EUCA - temporary tax.	(2) Promptly pay to Secretary of the Treasury remaining portion of the FUTA tax.	Permit States to collect FUTA tax and pay it over to the U.S. Treasury

CURRENT SYSTEM	S. 2360	OREGON PROPOSAL
Moneys in the State unemployment fund may be used only for payment of benefits -- except for administration as cified in the Reed Act.	. State may use any funds (and any interest earned) which are not used for payment of costs of administration for payment of benefits or for future costs of administration	SAME
	. Secretary of the Treasury and the Secretary of Labor shall approve agreement unless -- (1) Secretary of Labor determines **that** State law does not meet requirements of FUTA, Title III of the Social Security Act, and the Wagner-Peyser Act, or (2) Secretary of the Treasury determines that the State is unable to properly collect and pay over the FUTA tax.	No such provision
	. If Secretary of Labor and Secretary of Treasury determine that States which has entered into agreement **is** not meeting requirements, the FUTA offset credit for employers in such State is reduced by one-tenth of the credit for any year in which such noncompliance occurs. If noncompliance remains effective for more than one consecutive calendar year, the FUTA credit is further reduced by an additional 10 percent for each such consecutive calendar year. The additional FUTA tas so paid by employers is deposited in the Federal Unemployment Account ("loan fund") to	No such provision

CURRENT SYSTEM	S. 2360	OREGON PROPOSAL
	be credited to States with loan balances in proportion to each States' respective share of the total outstanding balances of all loans. An agreement may not be terminated. . A State may continue to remain under the present grants system by not electing to seek an agreement for collection and retention of FUTA tax.	No such provision
II. MANAGEMENT OF STATE UNEMPLOYMENT FUND State unemployment funds must be paid over to the Unemployment Trust Fund in the U.S. Treasury. A separate balance is maintained for each State. Funds are invested by the Secretary of the Treasury in interest-bearing obligations of the United States and earnings credited to each State in proportion to its share of the total balances in the Fund.	At its option, a State may choose to manage its own unemployment fund rather than maintain an account in the Unemployment Trust Fund. Such choice must be made on a taxable year basis. (While there is no explicit statements to this effect, presumably a State would be able to withdraw any positive balance to its account in the Unemployment Trust Fund at the time it chooses to maintain its own unemployment fund.)	. FUTA funds deposited in U.S. Treasury. . State revenues deposited with State Treasurer.
III. RESPONSIBILITIES OF THE SECRETARY OF LABOR	The Secretary of Labor is responsible for maintaining the following activities and functions that support and contribute to the quality of labor exchange system in each State and which preserve the national requirements of such a system: test development and research; maintenance of an occupational and industrial classi-	

CURRENT LAW	S. 2360	OREGON PROPOSAL
	fication system; exchange of labor between the States.	
IV. MAINTENANCE OF EFFORT	The States, through the Governor's office or legislatively designated agency, shall be required to maintain their employment and unemployment efforts in accordance with the provisions of the Wagner-Peyser Act and the Social Security Act. States shall be required to maintain an actuarily sound employment and unemployment system.	
V. EXTENDED BENEFITS (EB) Provided under Federal-State Extended Unemployment Act of 1970. Federal law specified "on" and "off" triggers. Federal Government pays 50 percent of EB costs.	No change	State would pay 100 percent of EB costs and by State law provide triggers under which payment is made.
VI. FEDERAL CONFORMITY REQUIREMENTS State UI laws msut conform to Federal law requirements, including Federal interpretation by ruling of Federal court or regulation.	No change	State laws must conform to Federal law but interpretation by State court may differ from Federal "administrative" interpretation.

Question: Provide a State-by-State table for the record indicating the percent of the revenues each State receives back under each system, in relation to tax collections.

Answer: The table that follows indicates the amount of administrative funds as a percent of FUTA liabilities that each State is estimated to have received in the years 1972-1981. The percent returned is determined by dividing the actual State UI and ES obligations by the estimated FUTA (.45 percent/$6,000) liabilities.

Under the Warner bill each State receives 100 percent of the FUTA liabilities if it opts out of the current system. At this time there is no indication of the number of States that would choose this course.

Data based on the Oregon proposal is not currently available.

The Information Follows:

RUN DATE: 03/16/82

GRANTS % * (REVISED 03/16/82 - EXCL. ES GR)

STATE	72	73	74	75	76	77	78	79	80	81
ALABAMA	70.5	64.2	65.2	84.9	97.6	103.4	80.0	86.2	97.1	112.6
ALASKA	300.0	252.9	214.3	241.4	312.9	518.5	411.4	325.0	373.5	377.6
ARIZONA	98.9	81.0	86.8	131.3	159.0	178.6	105.7	97.6	105.6	118.8
ARKANSAS	90.8	79.8	91.0	117.2	146.9	149.5	104.8	109.8	115.0	130.0
CALIFORNIA	88.5	85.6	78.5	114.9	124.6	157.6	92.5	91.5	105.7	118.0
COLORADO	82.1	57.1	62.9	83.1	95.7	122.2	81.8	78.0	81.5	97.3
CONNECTICUT	93.6	76.4	70.1	85.6	103.8	117.0	80.4	82.1	82.6	99.7
DELAWARE	64.5	63.6	64.7	84.4	100.0	102.9	87.5	91.8	98.0	109.8
DIST. OF COL.	132.7	132.1	124.6	144.8	190.6	201.9	160.6	148.7	157.0	167.9
FLORIDA	44.5	42.5	42.3	48.2	72.7	77.3	56.8	53.9	49.8	58.8
GEORGIA	45.5	44.3	45.0	79.8	82.1	79.8	55.5	63.6	66.4	79.3
HAWAII	113.2	100.0	107.1	123.3	147.7	229.7	123.1	118.4	118.8	125.0
IDAHO	165.5	158.1	135.3	158.3	205.3	284.4	166.7	137.9	195.4	227.7
ILLINOIS	61.2	56.5	41.5	71.0	97.6	93.9	68.8	69.7	96.0	91.2
INDIANA	49.4	43.8	50.0	71.0	80.1	77.4	57.4	57.1	67.6	85.6
IOWA	66.1	61.2	63.6	77.2	102.9	109.2	80.4	91.2	93.5	104.7
KANSAS	76.7	71.9	73.1	85.7	105.3	100.8	76.0	72.9	77.7	89.7
KENTUCKY	56.0	48.2	52.8	79.0	87.0	86.7	67.7	73.0	80.6	92.3
LOUISIANA	73.3	66.5	67.7	79.7	90.3	105.2	66.7	64.2	67.1	80.6
MAINE	97.8	93.6	95.8	117.0	126.9	151.9	122.7	115.6	131.3	148.1
MARYLAND	70.7	59.9	50.5	67.2	103.1	107.0	74.4	78.6	85.0	91.0
MASSACHUSETTS	94.7	85.8	82.3	108.2	128.8	128.8	83.5	76.4	79.2	95.2
MICHIGAN	87.1	80.7	85.0	134.6	138.2	137.3	95.2	96.8	160.2	172.9
MINNESOTA	73.2	71.7	65.4	80.3	98.5	118.4	76.5	77.1	82.0	87.1
MISSISSIPPI	86.9	77.2	73.5	90.6	104.8	106.3	97.4	95.1	109.9	125.8
MISSOURI	69.8	64.7	67.9	87.7	108.1	112.4	79.3	90.5	97.2	110.1
MONTANA	136.0	133.3	124.1	155.2	203.3	229.0	169.6	127.3	131.8	150.0
NEBRASKA	72.4	76.6	77.6	92.5	105.6	115.8	84.6	86.4	97.3	124.8
NEVADA	152.8	131.7	137.2	177.8	193.8	234.0	151.3	134.7	138.2	151.0
NEW HAMPSHIRE	89.5	80.5	76.7	104.9	108.9	96.0	75.0	72.0	82.9	84.6
NEW JERSEY	89.8	83.2	87.7	119.4	138.9	156.3	96.9	98.1	101.4	109.8
NEW MEXICO	127.0	107.5	107.0	119.1	142.9	116.2	113.2	110.6	119.8	137.2
NEW YORK	109.5	97.5	106.5	137.8	145.8	147.6	112.3	114.8	114.0	122.7
NORTH CAROLINA	49.6	45.1	45.5	66.0	70.5	76.5	61.1	61.7	69.4	76.9
NORTH DAKOTA	213.3	172.2	161.9	186.4	192.0	242.3	170.3	192.7	188.1	228.6
OHIO	54.3	51.5	49.8	66.9	75.4	81.2	58.6	58.6	81.6	85.8
OKLAHOMA	98.0	89.0	87.4	98.3	115.4	119.1	89.3	89.8	92.6	111.3
OREGON	100.0	88.4	96.6	127.0	165.3	206.4	118.2	120.8	137.0	158.3
PENNSYLVANIA	71.7	69.5	76.2	98.2	115.1	138.4	101.3	97.3	108.3	133.3
PUERTO RICO	150.0	125.7	133.8	162.5	193.0	224.3	121.8	147.3	154.8	106.7
RHODE ISLAND	138.3	122.4	126.5	162.5	164.7	176.9	152.1	141.6	156.4	170.5
SOUTH CAROLINA	54.9	51.5	53.8	81.6	89.2	91.1	72.5	68.5	75.2	92.8
SOUTH DAKOTA	166.7	155.0	140.9	177.3	208.0	203.7	129.7	195.0	156.4	194.7
TENNESSEE	46.4	44.7	44.0	63.9	71.7	80.3	54.1	57.4	66.0	73.6
TEXAS	59.3	54.0	52.8	59.1	73.3	76.8	56.0	54.3	57.8	66.0
UTAH	202.3	154.2	154.9	184.9	214.0	308.3	175.6	185.7	189.0	232.0
VERMONT	138.1	140.9	127.3	161.9	173.9	209.1	132.4	127.0	143.2	145.9
VIRGINIA	43.6	34.9	38.5	49.4	56.0	55.8	46.4	48.8	49.2	58.3
WASHINGTON	136.9	113.2	103.8	132.9	161.9	192.8	119.9	111.7	123.9	136.3
WEST VIRGINIA	85.3	69.6	73.2	82.1	86.5	94.8	84.0	93.2	104.6	118.1
WISCONSIN	73.0	69.1	68.7	87.6	100.0	117.5	81.3	83.8	105.1	109.2
WYOMING	164.3	131.3	110.0	114.3	129.2	148.1	117.9	115.2	127.1	158.3

*/ TOTAL GRANTS (EXCLUDING GENERAL REVENUES) AS A PERCENT OF 95% OF ESAA SHARE OF FUTA.

PREPARED BY DOL/ETA/UIS/DAS.

DECLINE IN PERCENT OF JOBLESS GETTING BENEFITS

Question: According to press reports, only 37 percent of those out of work are receiving unemployment compensation, whereas 75 percent of the jobless received benefits at the height of the 1973-1975 recession. What accounts for the sharp decline in the percent of jobless persons drawing unemployment?

Answer: The two sets of figures are not comparable. The 37 percent figure reflects only those individuals collecting regular State benefits while the 75 percent figure includes not only regular benefit recipients but several other programs as well. The data shown below are comparable and include benefit recipients from all UI programs.

	May 1975	March 1982
Total Unemployment	8,433,000	9,854,000
UI Claimants	6,218,000	4,248,000
Percent drawing Unemployment	73.7	43.1

It is important to note that rather than a "sharp decline", what has not occurred is the normal increase in the percentage during a recessionary period. The ratio between the regular program unemployed and the total unemployed in selected years is as follows:

Year	Ratio
1958	54.6%
1959	44.5%
1962	45.5%
1966	36.9%
1970	43.7%
1972	37.9%
1975	50.1%
1976	40.4%
1978	38.1%
1980	43.6%
1981	36.8%

The reason for the lack of increase in this ratio in 1981 appears to be due to a combination of factors rather than a single factor; e.g., State and Federal law changes, back-to-back recessions, the changing composition of the labor force, all acting in the same direction to reduce the ratio may account for the change.

Question: Does this prove a lot of people were previously getting benefits who didn't really need them, or are truly needy people falling through the "safety net"?

Answer: Two major changes have been taking place in State unemployment compensation laws that have a significant impact on the difference between the number of all unemployed and the number who are receiving unemployment compensation. They are:

(1) Qualifying requirements. Many States have strengthened the requirements for benefit eligibility to assure that benefits

are payable only to individuals with a demonstrated attachment to the labor market. This eliminates those with only marginal attachment, who have worked only a brief number of weeks and/or had very limited earnings.

(2) Disqualification provisions. Very few States now limit periods of disqualification for voluntary quit or discharge for misconduct to a specific number of weeks, after which benefits become payable. The general practice is to disqualify such individuals for the period of unemployment ensuing after the disqualifying separation and in a great many States until the individual has requalified by new work which has lasted for a fixed number of weeks and/or in which earnings have reached a multiple of the weekly benefit amount.

SPECIAL TARGETED PROGRAMS

Question: You are proposing $200 million for a new form of Secretary's Discretionary Fund, to take the place of existing programs for older Workers, migrants, Indians and special target groups such as veterans and trade-impacted workers. Since these separate programs are currently funded at nearly $500 million, which activities do you expect will be squeezed out at the reduced budget level?

Answer: Although the amount for Special Targeted Programs is less than CETA funding levels for these programs in previous years, we firmly believe that the $200 million budget request will permit the Secretary to fully achieve the objectives of the Administration's bill. We also feel that improved management, reduced administrative requirements, and careful targeting of resources will enable us to provide more effective assistance than ever before. In addition to the Special Targeted Programs, the bill recognizes the need for service to other groups by allowing each State to use up to 10 percent of its allocated funds for other individuals with special labor market disadvantages, such as older workers, in-school youth, displaced workers and veterans.

Question: Do you expect the Committee to approve $200 million without a plan for how the Department proposes to spend the money for specific activities? When will a detailed spending plan be available for the proposed $200 million for "Secretary's Responsibilities"?

Answer: We have not yet developed firm plans for the use of funds within the Special Targeted Programs category. We anticipate that these plans will be developed well before the beginning of the next fiscal year.

GAO STUDY OF WIN

Question: The GAO study indicates the WIN program has been enrolling predominantly individuals who really didn't need help and most of whom found jobs on their own. Do you think the program would be any more useful if it concentrated on those with the least employability potential for private sector jobs -- or would these people be better served by workfare type programs?

Answer: The objective of the WIN program is to assist welfare recipients to become self-supporting, preferably by employment in the private sector and thereby reducing welfare outlays. An effective approach to assisting welfare recipients attain self-supporting employment is to provide a variety of helpful measures which can be adapted to each individual's needs. These measures range from job search assistance to workfare positions. While it is inappropriate and wasteful to serve those who would be able to get off welfare by their own efforts, experience with manpower programs during the late 1960's and early 1970's seems to indicate that serving only those with the least potential for success in the private sector is likewise an inappropriate use of employment and training resources. State and local personnel are in the best position to make the judgment about who should be served and how they should be served to achieve the goal of WIN. The Administration's proposals--the proposed mandatory CWEP, the Job Training Act of 1982 and the Social Services Block Grant--are designed to enable them to do this as readily as possible.

Question: Would it be feasible to scale down the size of the program, to serve welfare recipients in the "middle" range -- between those with limited employability potential and those who really don't need much help?

Answer: Under the Administration's proposals, States will have the flexibility and resources to provide whatever levels of services they deem appropriate to those welfare recipients for whom, in their judgment, there will be the biggest payoff.

Question: The GAO report concluded "these findings raise questions about what are the benefits of participating in WIN training components and what can be done to help AFDC recipients achieve economic self-sufficiency." What prospect is there for research to find the answers to these questions?

Answer: Evaluation projects undertaken by the Department of Labor on programs conducted under the Job Training Act of 1982 will be structured to determine the impact of this program on earnings, employment and receipt of welfare. Potential further research could be directed toward determining what works best for what groups of welfare recipients.

Question: Do you have any ideas as to why participation in Vocational Training didn't seem to do much good for welfare recipients?

Answer: Because the GAO study did not use appropriate experimental design, we cannot judge the soundness of the GAO's findings that training was of no value for welfare recipients. Other research sponsored by the Department of Labor, both on the WIN program and on CETA trainees who were welfare recipients, has indicated that vocational training was effective.

Question: Is there any evidence that other vocational training programs have been any more successful in helping welfare recipients gain permanent jobs?

Answer: Department of Labor research and evaluation findings over the years have shown that classroom and on-the-job training programs are generally cost-effective and cost-beneficial in serving welfare recipients.

RETRAINING UNDER TRADE ADJUSTMENT ASSISTANCE

Question: In what fields do you expect the workers to retrain?

Answer: Consistent with the requirements of the Trade legislation, training will be in those fields which would provide good prospects for reemployment following the completion of training. tate Employment Security Agencies have been told to examine their labor market areas carefully to ascertain the types of vocational training which would most likely lead to employment. A cursory survey of State agencies with the heaviest trade-impacted worker population indicates that training is being approved in the following areas:

- Accounting
- Clerical positions
- Robotits (developing and repairing robots for assembly line work)
- Structural welding
- Computer sciences (data processing)
- Heating and air conditioning
- Medical professions, i.e., registered nursing, laboratory technician

Question: Who will provide the retraining programs?

Answer: The training programs will be administered through the State Employment Security Agencies which are required by the 1981 Amendments to confer with State Boards for Vocational Education in determining training needs. Insofar as possible, priority will be given to on-the-job training, which includes related education necessary to acquire skills needed for a position within a particular occupation, in the facilities of the adversely affected firm or another firm. This type of training is preferable since the employing entity shares in the training costs and since on-the-job training generally will insure employment following successful completion of the course. Institutional training is another desirable form of training, with priority given to providing the training in public area vocational education schools and community colleges if it is determined that such schools are at least as effective and efficient as other institutional alternatives.

Question: How much will retraining cost per participant and year of service?

Answer: Approximately $19 million of the $25 million appropriated for Trade training, job search and relocation allowances will be used to train trade-impacted workers. We estimate that around 6,250 workers can be trained with this amount at an average training cost of $3,200 per trainee during FY '82. The balance of the $25 million will be used to finance job search and relocation allowance expenses.

Question: How do you plan to evaluate the benefits and costs of these retraining programs? When will you be able to report on the results of your evaluation efforts?

Answer: There are no current plans to do an indepth evaluation of the benefits and costs of the retraining programs. Earlier plans to make evaluation of the training programs a major focus under the new program emphasis were put aside when funds for training, job search and relocation allowances were appropriated at $25 million, considerably less than the $98.6 million requested by the Administration. The entire $25 million has been allocated to the

State agencies to provide program benefits. While we cannot do an indepth evaluation because there are no resources available for this purpose, we will periodically review and assess data generated by our TAA reporting system. The results of this review and assessment will be contained in the Secretary's quarterly reports to the Congress on the expenditure of training funds and the anticipated demand for training as required by the 1981 amendments to the Trade Act program.

EVALUATION OF PRIVATE INDUSTRY COUNCILS

Question: Public/Private Ventures and Ohio State University--both of which are under contract with the Department of Labor--issued studies of the Private Sector Initiatives Program (PSIP) in mid-1981. Both studies discussed Private Industry Council (PIC) efforts, but acknowledged the difficulties of judging the success of a PIC in any formal manner. What has the Labor Department done to define success as it relates to the Private Industry Councils and to measure that success based on some formal criteria?

Answer: The study conducted by Ohio State University (OSU) on PSIP was funded by the Department of Labor. The purpose of the OSU study was to give an impressionistic account of the development of PSIP. The Department has not contracted for or performed an evaluation of PSIP which would measure the success of the program in any formal manner. However, Title VII programs have been included in the work done on developing performance standards for CETA prime sponsors. Though sophisticated performance benchmarks were not applied to Title VII as to Title II B/C programs, indicators such as entered employment rate and cost per placement, were used in assessing prime sponsor Title VII programs.

AGING STUDY

Question: What is the Department's assessment of the Title V evaluation performed for the Federal Council on Aging by Morgan Management System, Inc., and what policy changes can be made based on this evaluation report? Does the Department plan a more in-depth evaluation of the Title V program now that the Morgan Management System Inc. study has been completed?

Answer: The Department has not officially substantiated the findings of the Morgan Management evaluation. We do not plan to make any policy changes in the current Title V program because we expect to be transitioning from the existing Title V program to the services which will be provided under our proposed employment and training program.

While the Department has no plans to evaluate the Title V program, the National Commission on Employment Policy does plan to study the effectiveness of older worker programs, including Title V and CETA.

Question: What will be the effect of the elimination of ETA's Office of Management Assistance Staffs in the regions and the cutback in staff at headquarters? What functions will be eliminated?

Answer: While there has been some reduction to the Office of Management Assistance staff in the regions, the basic functions under ETA's method of delivering management assistance and training services to CETA prime sponsors, called the Management

Assistance and Training System (MATS), are still being carried out. The functions are being performed by staff in other units of the regional office.

Once the Congress mandated the establishment of an Office of Management Assistance, ETA took immediate steps to establish the regional Management Assistance Units and to define clearly and make operational the roles and responsibilities of those units. The units were established almost two years prior to the reduction-in-force and the MATS functions were fully operational in all regional offices. Therefore, reducing staffs within the MATS units had no significant effect on the delivery of services since the respective functions were assigned to and are carried out by other regional units.

There has not been a cutback in the Office of Management Assistance staff at headquarters.

Question: What management assistance has Labor provided to CETA prime sponsors?

Answer: Under the Management Assistance and Training System (MATS), ETA provided direct on-site assistance to over 15,000 grantee staff and training to over 49,000 grantees in the following key functional areas:

- Subgrant Management
- Financial Management for Non-Financial Managers
- Management Information Systems
- Audit Resolution/Debt Collection
- LMI for Private Sector Planning
- Job Development/Placement
- Basic Monitoring Techniques
- USES Counselling Supervision Competencies Training
- Grants Management for ETA Managers
- Designing and Packaging Training
- Training Techniques/Presentation Skills
- Job Service Representative Training
- CETA Program Administration and Management Training for CETA Directors and Key Staff

Training in these areas was provided through the utilization of the MAT delivery systems such as the National and Regional Training Centers; two Labor Market Information Centers; State and Local Training Institutes; and the establishment and operation of two Area Training Institutes.

ETA provided the on-site management and technical assistance through use of Federal staff specialists and contractor staff. ETA also supported and coordinated the delivery of a wide variety of management assistance to prime sponsors through Grantee-to-Grantee MAT delivery functions whereby the expertise of one grantee was made available to other grantees in the system. ETA established the grantee-to-grantee delivery functions on a region-wide, multi-state, and single state basis in recognition of the fact that the bulk of operational expertise resides in grantee organizations, and that there is greater receptivity on the part of grantees to accept and use assistance from their peers. This networking method allowed for economical, timely, and locally appropriate service delivery.

Question: What has Labor done to assure that qualified accountants, management specialist, and other professionals provide management assistance to CETA prime sponsors?

Answer: Regional office staff are available to provide professional management assistance to prime sponsors with the most critical needs or who are experiencing the most critical problems. In addition, we have established a Resource Inventory in each regional office. These inventories provide information on the name, location, area of expertise and average service cost for qualified individuals, organizations, institutions, etc., who are available to respond to specific requests of prime sponsors. Regional office staff are able to match qualified providers of MAT with specific needs identified at the prime sponsor level and correct program deficiencies in a very timely manner. Utilization of the Resource Inventories along with other management assistance and training delivery activities under the MAT system resulted in ETA's providing an increased level of quality management assistance to CETA prime sponsors.

COMPARISON OF NATIONAL VS STATE AGENCY SPONSORS

Question: Under Title V of the Older Americans Act, do national organization sponsors or State sponsors have a better track record with respect to assisting participants to find unsubsidized employment and if so, what accounts for the difference?

Answer: Strict comparisons of placement rates among sponsors are difficult to make because of the many intervening variables involved. Factors such as individual sponsors' emphasis on placement, transportation problems in rural areas, language, and other artificial barriers to employment, etc., would make it more difficult for some sponsors than others in placing participants in unsubsidized employment.

At the conclusion of the last complete program year, the national sponsors had an average unsubsidized placement rate of 11.6 percent, while State sponsors had a rate of 9.8 percent. The factors indicated above could account for this marginal difference.

STATE EMPLOYMENT AND TRAINING COUNCILS

Question: To what extent have the CETA-funded State Employment and Training Councils made recommendations for improving the coordination and effectiveness of employment and training services, and to what extent have such recommendations been accepted and implemented?

Answer: There are no formal studies which have evaluated the effectiveness of the State Employment and Training Councils. The Councils typically review and comment on the plans of all CETA prime sponsors and make recommendations for improving the coordination and effectiveness of the prime sponsors' employment and training services. However, there is no requirement that the prime sponsors accept or implement the Council's recommendations in all cases.

COLLECTION OF DUPLICATE PAYMENTS

Question: Has the Department implemented a GAO recommendation to review its disbursements to vendors who had previously received duplicate payments for goods or services rendered in support of the

CETA program to determine whether more have occurred? If so, how much money in duplicate payments was identified and what is the time-table for collection?

Answer: The Department continues to be concerned over the possibility of duplicate payments to vendors. We now have in operation in the Office of the Assistant Secretary for Administration and Management an automated procurement accountability and control system which specifically provides safeguards over possible duplicate payments. This system is in the final stages of implementation and we plan to add other national office agencies over the next six to twelve months. Other offices are currently processing payments on a manual system. Specific operations manuals require that this process include verification of payment against outstanding orders and prior payments. As a part of our technical assistance to each operating fiscal office, we send in a team of specialists to perform a detailed review of their operations approximately every 12-15 months. One specific aspect of that review is to look for duplicate payment problems and to highlight where and how procedural improvements are needed. Finally, a practice followed at year-end also provides a safeguard against the government's loss even if a duplicate payment was made. Prior to retiring vendor files, a complete review of payments during the year is undertaken wherein duplicate payments would be picked up and collection action taken. Having the entire file reviewed at one time picks up other problems that might otherwise occur such as untimely filing of paid invoices.

GAO REPORTS ON TITLE III AND IV FUNDS

Question: What actions have you taken to correct the deficiencies noted in two recent GAO reports entitled "Information on Funding Commitments from Comprehensive Employment and Training Act Titles III and IV during Fiscal Year 1982? (HRD-81-145) and "Labor Needs to Better Select, Monitor, and Evaluate Its Employment and Training Awardees (HRD-81-111)."

Answer: The ETA procurement process has been extensively strengthened with appropriate cross checks and safeguards built into the system. ET Order 3-82 addresses each and every procurement deficiency cited by GAO in HRD-81-145 and HRD-81-111. For example, the use of sole source awards has been dramatically decreased. In addition, the sole source justifications are much more detailed and comprehensive. All award proposals are evaluated prior to refunding. Program assessments are required documentation, and are reviewed by several responsible operational areas (Office of Policy, Evaluation and Research and the Division of Contracting Services.)

New procedures require adequate evaluation and negotiation in order to meet the new minimum procurement management requirements. We have a new internal review/approval process, which mandates a thorough review and negotiation, and has sufficient safeguards to insure compliance with the latest Department of Labor procurement procedures.

On site monitoring plans have been developed. Forty-five key sites have been identified which directly provide services to enrollees or provide essential management support services, such as Community Based Organizations. We intend to visit each site at least once and more often if the first visit (or desk review audit) indicates the need for follow-up.

WIN DEMONSTRATION PROJECTS

Question: What is the status of the new AFDC Demonstration projects?

Answer: According to DHHS, 26 States submitted applications within the specified time period. Subsequently, 9 States withdrew their applications. Nine States have actually begun operations -Delaware, Florida, Maine, Massachusetts, Michigan, Oklahoma, Oregon, South Dakota and Texas.

Question: How many States have gone to using AFDC funds for subsidizing wages of WIN participants?

Answer: DHHS has informed the Department that no State has adopted a Work Supplementation Program (WSP) thus far.

Question: How many States have gone to an AFDC program in lieu of the Employment Service Administered WIN program?

Answer: The WIN Demonstration Program, which permits States to run WIN entirely through the State Welfare Agency, has been initiated by nine States and eight other States plan to do so. As explained earlier, nine other States, which originally expressed an interest in mounting such demonstrations and submitted applications to do so, have since withdrawn their applications.

Question: What conclusions have been drawn from the WIN full funding demonstration projects?

Answer: As the Committee knows, this was a two-year demonstration funded at five sites by the National WIN Office to examine the capacity of the basic WIN model to serve all, or a substantive majority, of the WIN registrant population. The five sites were: Atlantic City, N.J.; Columbia, S.C.; Grand Rapids, Michigan; Houston, Texas and Vicksburg, Mississippi. The final report is still being reviewed at the staff level and its full implications are being evaluated.

Question: What is their current status?

Answer: The Total Registrant Involvement Projects have been phased out, having received only 1st quarter funding in Fiscal 1982.

Question: To what extent do you expect the States to continue these projects in Fiscal 1983, under proposed block grant consolidation?

Answer: Under the Administration's proposals, States have the option to continue WIN-type activities, at whatever level they choose, under alternative legislative initiatives and funding sources. These include the proposed mandatory CWEP, The Job Training Act of 1982, and the Social Services Block Grant.

LOCAL ADMINISTRATION OF TAX CREDIT PROGRAM

Question: The Targeted Jobs Tax Credit Program has been administered by local Employment Services offices. How will the Targeted Jobs Tax Credit program be administered in areas where Employment Service offices have been closed as the result of budget cutbacks?

Answer: Statewide TJTC coverage will be maintained by the remaining local Employment Service offices, with some offices serving a larger area than previously served.

PERFORMANCE STANDARDS

Question: How far has the Labor Department come in the development of performance standards for Employment and Training programs that recognize local conditions and employment barriers?

Answer: For FY 1982, the Department implemented a performance standards system for Title II B/C of CETA which recognized local employment conditions and barriers. More specifically, through a statistical procedure, planning benchmarks for five measures were individually set for all prime sponsors. The benchmarks were adjusted according to the influence that enrollee characteristics, program mix and economic conditions had on program performance. The measures include entered employment rate, cost per entered employment, positive termination, cost per positive termination and wage at placement.

Question: For what CETA titles have performance standards been put into effect?

Answer: As noted above, performance standards are in place for Title II B/C.

Question: What is the status of standards for the other titles?

Answer: Standards for Titles IV and VII, according to the above procedures, are to be implemented in FY 1983. Performance standards for Indian and Migrant programs and Job Corps are also currently under development.

COMPARISON OF NATIONAL VS. STATE AGENCY SPONSORS IN OLDER AMERICANS PROGRAM

Question: Provide a breakdown of rates of transition to unsubsidized employment for each of the national sponsors and States and the overall rates for the latest year such data are available.

Answer: The following chart provides the requested information for the last complete program year which ended on June 30, 1981. We have aggregated the data for the State sponsors.

Sponsor	Rate
National Association Pro Spanish Speaking Elderly	10.9%
National Center on Black Aged	4.8
National Council on the Aging	12.1
National Retired Teachers Association	32.0
National Council of Senior Citizens	8.9
United States Forest Service *	6.3
Green Thumb *	5.2
National Urban League	15.0
Summary of National Sponsors	11.6
Summary of State Sponsors	9.8
National Summary of All Sponsors	11.2

* Operate in rural areas where alternative job opportunities are fewer and where certain barriers to employment are more critical, e.g., transportation.

JOBS FOR ELDERLY ADMINISTRATION COST

Question: What are the administrative costs associated with the grants to national organizations as compared to States. Provide this information for the record for 1978-81, if available.

Answer: This information is not readily available for the years 1978 - 1980. The chart below provides the percent of actual administrative cost provided from Federal funds during the last complete program year, which was from July 1, 1980 to June 30, 1981.

Sponsors	Percent of Federal Administration Cost
National Association Pro Spanish Speaking Elderly	14.8
National Center on Black Aged	13.8
National Council on the Aging	14.9
National Retired Teachers Association	14.3
National Council of Senior Citizens	5.0
U.S. Forest Service	12.0
Green Thumb	11.2
National Urban League	14.3
Summary of all National Sponsors	11.0
Summary of State Sponsors	10.4
Summary of all Sponsors	10.9

By regulation, no more than 15 percent of the Federal funds may be used for administrative cost. All sponsors are subject to this requirement.

JOBS FOR ELDERLY

Question: If there is a large difference in the administrative costs associated with grants to national organizations as compared with grants to States, to what do you attribute it?

Answer: On the whole, there is not a great difference between the level of administrative cost charges by States when compared to national sponsors. The average administrative cost for National sponsors is 11%; that of State sponsors 10.4%.

CETA STATE COUNCILS

Question: How effective have the CETA-funded State Employment and Training Councils been in fulfilling their planning, coordinating, reviewing and reporting responsibilities?

Answer: The effectiveness of the CETA-funded State Employment and Training Councls (SETC's) has varied, according to the placement of the councils in the administrative hierarchy of the State, and to the authority granted to the Councils by the Governor. Those councils given clear responsibility for CETA as well as for other related programs, such as vocational education and the Employment Service, have been able to fulfill their planning and coordination functions relatively well at the State level for the balance-of-State's CETA program.

Under the Administration bill, the State council role is no longer advisory in nature. Instead the State Job Training Council, subject to the Governor's approval, has major responsibilities, such as designating substate delivery areas and approving area plans and activities, planning resource allocations, reviewing and providing management guidance for all programs, and developing appropriate linkages with other programs. Coordination will be facilitated under the Administration bill by this strengthened State Council role, the elimination of the direct funding relationship between the Federal Government and local areas, and the transfer of Wagner-Peyser State Council functions to the State Job Training Council.

GRANT AND CONTRACTING PROCEDURES

Question: What percentage of grants and contracts awarded by the Office of National Programs are sole source awards?

Answer: In Fiscal Year 1982, sixty-nine percent of contract awards, or twenty-two contracts have been awarded by the Office of National Programs on a sole source basis. This compares with 100 percent in FY 1981. In addition, the percentage of sole source contracts will decrease as new contracts under the competitive OJT and TOP RFP's are let. These twenty-two procurements are Title III discretionary grants and contracts under Special National Programs and Activities (SNPA) and not those awarded by formula, such as those under the Native American, Migrant and Older Worker Programs.

Question: Why aren't these awarded through a competitive process?

Answer: These contracts were awarded on a sole source basis because the contractors are special purpose organizations, singular in nature, which have a direct relationship to a constituency. The utilization of each of these single purpose organizations will be reviewed in Fiscal Year 1983 for competitive advertising. Most of the FY '81 contracts were due to expire at the same time (November-December 1981). If we had not made the sole source awards, there would have been a lapse of services for at least 90 days because of the time needed to award contracts competitively through the RFP process.

We are now placing greater reliance on competitive contracting and are limiting the issuance of sole source contracts to cases that are clearly in the public's best interest.

Question: When grants and contracts are renewed each year to the same organization, is the organization's prior performance always assessed before the award is made? If not, why not?

Answer: Yes. Under the new contracting procedures which have been instituted, each contract and/or contract extension is subject to review by:

1. Officials in the originating program office
2. Contract specialists in the Office of Contracting Services
3. A specially created procurement review task force under the direction of the Office of Policy, Evaluation and Research (OPER)
4. The Inspector General's office for any prior audit problems, or any other indications of improprieties.

The past performance of each of the sole source contractors was thoroughly assessed prior to their FY '82 contract award.

The performance assessment was documented separately and reviewed along with the proposal package in the extensive review mentioned above by the various offices in the ETA structure.

These assessments measure performance against agreed upon goals and responsiveness to reporting requirements and financial management.

Question: What has been done to improve the grant and contract management practices used by the Office of National Programs (ONP), as recommended by the General Accounting Office?

Answer: The Department has taken steps to achieve this objective by substantially strenthening the process through which the individual contractors and grantees are selected for funding. In line with recent recommendations made by the General Accounting Office, the Department is placing greater reliance on competitive contract and grant awards and is limiting the issuance of sole source contracts and grants to cases that are clearly in the public's best interest. The procedures to accomplish this overall objective are contained in Employment and Training Order 3-82 which was issued and became effective on December 23, 1981. This order establishes policy and procedures to be used by the Employment and Training Administration (ETA) for initiating, developing, processing, awarding and overseeing National Office Administered, Job Corps and Regional Office contracts, grants, cooperative agreements and other types of financial agreements.

As a matter of policy under this Order, ETA shall:

a. Make maximum practical use of competitive award procedures when issuing contracts and grants.

b. Issue contracts and grants to organizations which have established and documented fiscal integrity and are capable.

c. Issue Letter Contracts or authorize retroactive contracts and grants only under stringent conditions.

d. Clearly specify the work to be performed by contractors and grantees.

e. Rigorously monitor and assess the performance of contractors and grantees.

Question: Have grant and contract management responsibilities been separated from program responsibilities, as suggested by the General Accounting Office?

Answer: Yes. The contracting function in ETA now reports to the Finance Administrator rather than the program office. We have gone one step further in that ET Order 3-82 requires a further review of all procurement activity by an office (Office of Policy, Evaluation and Research) other than the office primarily responsible for the program activity being initiated.

ROLE OF NATIONAL ALLIANCE OF BUSINESS

Question: According to GAO, 29 organizations were funded last year to either study or provide technical assistance and training for the Private Sector Initiative Program. Funding totalled about $20 million of which the National Alliance of Business received $13.7 million. In view of the large amount of Federal funds provided the National Alliance of Business and various other organizations, for activities involving Private Sector Initiatives, what specific results have been realized from their efforts?

Answer: A number of contracts entered into last year were for the purpose of developing technical assistance guides and conducting special research and studies in the Private Sector Initiative Program. These guides and studies are to be used by the Department of Labor and the private and public sectors to specifically address special needs identified for the Private Sector Initiative Program. We are hopeful that the Technical Assistance guides and the studies carried out under these contracts will help us to identify means of developing better employment linkages with and within the private sector.

Some of the results obtained from these contracts were: Evaluation of the usefulness of the targeted jobs tax credit for the employment of special targeted groups. This evaluation identifies the types of employers which were interested in and took advantage of targeted job tax credit.

Evaluation of the private sector initiative program in selected sites and various promotional materials for the private sector initiative program.

In addition to the above, these contracts also addressed such areas as Small Business Internship, greater involvement of minority businesses, special technical assistance needs of the balance of State prime sponsors and the types of activities being undertaken.

We feel that with this kind of special assistance, prime sponsors and the private sector will be able to address collectively the problems realistically in facilitating the employment of disadvantaged persons.

With regard to the National Alliance for Business, the total cost for the NAB contract for the period November 1, 1980, through October 31, 1981, (NAB's contract year) was reduced by contract modification to $10,807,000. (NAB's funding has been further reduced to $6.7 million in FY '82) The major accomplishments achieved during this period can best be described in each of the following areas:

a. Maximized hiring of the disadvantaged in the private sector - NAB promoted special activities designed to encourage leadership in the private sector to take a high active role in Private Industry Councils (PICs) and to stimulate the hiring of the disadvantaged through PIC involvement in training and employment programs directed at the disadvantaged.

b. Increased job openings and opportunities, particularly for the hard-to-employ - NAB identified examples of existing CETA economic development linkages and employment generating services and examined the critical assistance needs of selected PIC and prime sponsor sites in formulating similar partnerships.

c. Assisted special disadvantaged groups, especially youth and ex-offenders to obtain meaningful employment opportunities - In 1981, NAB operated a summer youth program in 25 project sites, a College Cluster program in 50 predominantly minority colleges, a Youth Motivation Task Force in 38 of our Nation's historically Black colleges and a design model for ex-offender employment programs in 4 project sites.

d. Developed new institutions, staff and information systems to increase performance in all areas - NAB developed the PIC Management Initiative, the primary focus of which in FY '81 was to help PIC's improve their planning and evaluation, goal-setting and feedback functions in conjunction with prime sponsors. Technical assistance and training was primarily provided directly to appropriate prime sponsors or PIC staff by NAB Regional Office staff. Technical assistance needs which could not be adequately addressed within the Region were identified to the NAB National Office for inclusion in the ongoing needs assessment and addressed through nationally operated training or technical assistance.

e. Operated information exchange system - NAB operated a Private Sector Initiative Program (PSIP) Clearinghouse which functions to disseminate information about PIC's and PSIP activities.

Question: How much is budgeted for Fiscal Year 1983 for studies and technical assistance related to the Private Sector Initiative Program?

Answer: We have not yet developed firm plans for funding program support activities for FY 1983.

JOBS FOR THE ELDERLY

Question: You are proposing to eliminate the Community Service Employment Program for Older Americans, which provides 54,200 jobs for persons aged 55 and over. How many of these individuals do you realistically expect will find other jobs, or be placed in other Federal programs?

Answer: We expect that a substantial number of SCSEP participants will be placed in jobs or in training for the following reasons:

- increased emphasis on placement by current sponsors
- utilization of 10% of block grant funds which provide governors with the flexibility to serve groups with special labor market disadvantages including older workers
- utilization of $200 million for special targeted programs
- emphasis on training and not income maintenance will enhance placement into unsubsidized jobs
- expected improvement in the economy will provide more job opportunities

Question: Do you disagree with the study conducted by the National Association of Retired Persons, which indicates that for every dollar invested, $1.15 is saved?

Answer: We have not been provided a copy of the study for comment.

Question: Have there been any critical evaluations concerning the effectiveness of this program, the extent of fraud and abuse, or excessive administrative costs?

Answer: The Department has not conducted any studies of the Title V program over the past five years. Experiential knowledge of the program does not indicate significant fraud and abuse or excessive administrative costs.

REDUCING PAPERWORK IN CETA PROGRAMS

Question: What have you done to reduce the paperwork burden imposed on Employment and Training Administration grantees? Have you reduced the amount of regulation grantees must comply with?

Answer: We have taken a very critical look at the present paperwork burden imposed upon prime sponsors by the CETA legislation, regulations, and Forms Preparation Handbook.

Over the course of several years since the Reauthorization of 1978, we have substantially reduced the administrative requirements for the program. Some of the reductions were as a result of programs being eliminated (PSE-Titles IID and VI). Additionally, the Omnibus Reconciliation Act merged the Youth Community Conservation and Improvement Project (YCCIP) with the Youth Employment and Training Programs (YETP). Recently, one annual report and a major portion of another annual report were eliminated.

The above represents a significant reduction in the paperwork burden imposed on prime sponsors. A further reduction in these administrative requirements would be very difficult in view of the necessity to conform to the legislative mandate for oversight by the Department.

APPRENTICESHIP SERVICES

Question: During Fiscal 1982, the Staff of the Bureau of Apprenticeship and Training was cut to 332 from 459 positions in Fiscal 1981. What has been the impact of these staff reductions upon the agency's ability to serve the private sector? If the functions of BAT can be reduced without undue harm to the training of apprentices and the provision of skilled craftsmen to the private sector, might one not make further economies by simply abolishing BAT entirely?

Answer: When ETA's RIF plans were announced, Congress requested that the deep personnel cut which was planned for BAT be halted. The Department agreed to this request and allowed BAT to take a proportionate share of staff reductions. BAT's staff was reduced by 10.8% compared to 15% for the remainder of ETA. (The 459 positions mentioned are budgeted positions and should be distinguished from actual employment.) In addition, ETA as a whole has reduced its travel expenditures and BAT has taken its fair share of these reductions.

In spite of the necessary staff and travel reductions, BAT has taken serious management actions to alleviate the impact on the private sector. We will continue to review and monitor BAT's efforts to insure maximum assistance to employers and labor in developing and maintaining apprenticeship programs.

AUDITING EMPLOYMENT AND TRAINING PROGRAMS

Question: Now that the Employment and Training Administration has eliminated its backlog of audits, what progress has the Department made in collecting disallowed expenditures?

Answer: The audit backlog was eliminated by September 30, 1981. Between October 1, 1981 and March 31, 1982 (the first half of FY 1982) ETA recovered over $11 million in debts, approximately the same amount ETA recovered in all of FY 1981. This 100 percent increase in the level of collection activity indicates that ETA is making progress in collecting disallowed expenditures since the "big push" in audit resolution ended on September 30, 1981.

Question: What percent of audit determinations have been appealed by the Employment and Training Administration grantees and what amount of money does this represent?

Answer: The only data which we have available at this time to address this question was compiled for the period April 1, 1980 through April 30, 1981. The data indicates that approximately 20 percent of all audits resolved during that period were appealed. (An audit report is considered resolved when the grant or contracting officer issues to the grantee or contractor a final determination addressing all audit findings.)

The existing automated tracking system currently does not contain complete data on debts now under appeal, although the system contains complete data on the results of appeals (e.g., the dollar amount or disallowances overruled or sustained). Complete data on debts under appeal should be available from the automated system by June 30, 1982.

AUDIT RESOLUTION AND FOLLOWUP SYSTEM

Question: What new auditing procedures have you installed or do you recommend to prevent future build-ups or unresolved audits?

Answer: The Department of Labor has developed an audit resolution and followup system which is designed to maximize the use of audits as a management tool, identify major problems, ensure timely resolution and implementation of audit recommendations, and provide needed management information.

The Department is now resolving questioned costs in a timely manner. At September 30, 1981, there were only 8 unresolved audits over six-months old (containing $9.7 million in questioned costs). At March 31, 1982, there were only 10 unresolved audits in this category ($2.1 million in questioned costs). All of these audits missed the 180-day deadline because of legitimate extenuating circumstances, such as active investigations. The Office of Inspector General tracks the resolution process very closely and is quick to notify management when an audit begins to approach the deadline.

SUBCOMMITTEE RECESS

Senator RUDMAN. We appreciate your being here this morning, Mr. Angrisani. We probably will have many discussions with you and your colleagues over the next several months because there are many very difficult issues which we listened to this morning and don't necessarily agree with all of them.

The subcommitte is going to stand in recess until tomorrow, when we will meet in this room to discuss funding for the Labor Management Services Administration, the Pension Benefit Guaranty Corporation, the Employment Standards Administration, and Departmental Management.

Mr. ANGRISANI. Thank you, Mr. Chairman.

[Whereupon, at 11:50 a.m., Wednesday, April 21, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, April 22.]

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1983

THURSDAY, APRIL 22, 1982

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 10:04 a.m., in room 1114, Everett McKinley Dirksen Senate Office Building, Hon. James Abdnor presiding.

Present: Senators Schmitt, Abdnor, Specter, and Burdick.

DEPARTMENT OF LABOR

LABOR MANAGEMENT SERVICES ADMINISTRATION

STATEMENT OF DONALD L. DOTSON, ASSISTANT SECRETARY OF LABOR FOR LABOR-MANAGEMENT RELATIONS

ACCOMPANIED BY:
RONALD J. ST. CYR, DEPUTY ASSISTANT SECRETARY
ERNEST J. GERMAN, DIRECTOR, OFFICE OF MANAGEMENT
MARY ANN WYRSCH, DIRECTOR, OFFICE OF BUDGET

SUBCOMMITTEE PROCEDURE

Senator ABDNOR. The subcommittee will come to order.

This morning, we will hear testimony from the Labor-Management Services Administration, the Pension Benefit Guaranty Corporation, the Employment Standards Administration, and departmental management.

We will begin with testimony from Assistant Secretary Donald Dotson, on appropriations requests for the Labor-Management Services Administration.

We welcome you to the committee. You have a number of your colleagues with you, so if you will just kindly introduce your colleagues and then proceed with your opening statement.

As I am sure you have heard a number of times before, your entire statement will be made a part of the record. You may proceed in any manner you care to.

INTRODUCTION OF ASSOCIATES

Mr. DOTSON. Good morning, Mr. Chairman.

As you know, the Assistant Secretary for Labor-Management Relations is also the Administrator for Labor-Management Services, the Administration which administers and enforces a number of diverse statutes, unlike many of the Assistant Secretaries of the Department who have a one-subject sort of program. So I have more than the usual number of associates with me.

To my left is Mr. St. Cyr who is my Deputy.

To my right is Mr. Jerry German who is Director of our Office of Management, Labor-Management Services Administration.

Also to his right is Mary Ann Wyrsch from the Department's Budget Office.

Behind me, in case you have more specific questions about some of our programs, I have the Administrator of the Pension and Welfare Benefit programs, the ERISA program, Mr. Clayton; I have the Director of the Veterans' Reemployment Rights program, Mr. Gonzalez; Mr. Hunsucker, who is Director of the program that administers the Landrum-Griffin Act. I also have Mr. John Stepp, the Director of the Office of Labor-Management Relations Services.

They are available in case you have more detailed questions.

Senator ABDNOR. We can ask you any kind of questions we want to, then, today with that reinforcement.

We welcome you all to the committee, and we are ready to hear from you. So you may proceed.

Mr. DOTSON. With your permission, as you suggest, I will submit our written statement for the record and give you a very brief comment on each one of our programs, the problems that we identify with, and what we know about them.

LANDRUM-GRIFFIN

The labor-management standards enforcement program, which enforces the Landrum-Griffin Act or Labor-Management Reporting and Disclosure Act, which followed in the wake of the McClellan committee hearings, was in my opinion our most critical problem. There seemed to have been a tradition developed in enforcing that law.

The public, union members, and Congress have become more and more concerned about the amount of embezzlement of funds, misuse of funds, that was taking place.

I think it is fair to say that the priority responsibility under that law, is to administer and supervise the rerun of union elections. As a result of the court ordered remedies, our workload reached such proportions that virtually all of the resources of that program were wrapped up in supervising rerun elections.

That left nothing for conducting audits, the main tool we have to discover the embezzlement of funds. We have taken steps to correct that problem.

I don't have to tell you of all the complaints, and controversy, that surround the pension program. It is like any new, complex statute, and has been a great problem for a lot of people, adjusting to its complexities and some of its requirements.

We are moving as quickly as we can, as I am sure you know from other hearings on this subject, to simplify as much as we can within the balance of the law the reporting requirements for those who are subject to it.

We are also moving the emphasis toward a straightforward approach to enforcement. That law has a very worthy purpose, of course; namely, to give wage earners the benefit and protection of their pension money. The age-old concept of fiduciary responsibility for trustees is what we are concerned about.

We want to make sure that their funds are protected and recovered, if possible, where they have been misused or embezzled.

We are moving away from what we saw as too much of an effort to embroider on and rewrite that law to develop it into some kind of detailed set of rules on how to behave; not that that isn't necessary to some extent. Exemptions are part of it. But rather than approach it on a case-by-case basis, we are looking to see if we can't arrive at broader class exemptions that will save those subject to the law from having to come in and present detailed and specific exemptions.

VETERANS' REEMPLOYMENT

The veterans' reemployment program is small in terms of numbers of personnel. It is a very important program, of course. And we are looking there to better efforts to facilitate cases, better efforts to combine similar cases, so that our efforts at litigation will be more productive in terms of reaching a broader class case with the resources we have available to it.

Our labor-management relations services program is not as well known, but in the long run, it could be one of the most important that we have. This is a program that keeps track of major negotiations, advises the Secretary and President on the progress of major negotiations, and strikes that are ongoing.

It also has a responsibility to keep track of the general state of labor-management relations in the country. We are making a major effort there to look at the problems of productivity, problems of national labor policy, labor-management relations, to see what we can do to make them less adversarial, to make them more realistic in terms of the alined purposes and long-range benefits to workers and employers.

We have studied some of the new approaches to labor-management relations. We have tried some of them ourselves within the Department. We are trying to act as a clearinghouse for those experiences so that others might be aware of them and have a look at them.

One of my general conclusions is that there is no one program or no one formula that will work. What will work in one industry may not work in another. What will work in one part of the country may not work in another. But we certainly have not been doing as well as we should.

Senator ABDNOR. Thank you for that review of your activities. I don't deny you have quite a load to handle down there. It may not be one of the ones that is getting all the attention in the news. But it is a very important part.

You already, through your various responsibilities, have touched upon the veterans' reemployment rights, and we have some thoughts in that area as well as questions.

The number of veterans' reemployment cases that were pending at the end of the year were projected to increase, I guess, from 966 in fiscal year 1981 to as high as 3,370 in fiscal year 1983.

Now, why does this backlog of veterans' cases more than triple in 2 years? Is there any obvious reason for this?

Mr. DOTSON. In terms of the number of filings, is that what you are concerned with?

Senator ABDNOR. Yes.

Mr. DOTSON. Well, I think there is a combination of reasons for it. Of course, we have this large number of people who fall under the protection of that law. I am one of them.

And then, we have the downturn in the economy, tremendous competition for positions. And as you know, it has become the usual thing now for people who are discouraged and frustrated in their efforts to find employment to try anything and everything they can.

Whether their case has merit or not, it is a common thing now for people to file every charge they know how to file in their effort to get a job. And that is no general comment on the merit of many of those charges, nor is it an adverse comment on those who file. It is a natural, and I think understandable, response.

Senator ABDNOR. I guess that is almost a tripling. So you think that unusual conditions brought this about. It has, I guess, almost tripled in the last period of 2 years. So you think more and more people do reserve their fiscal rights.

How long does a veteran wait before his case is processed? Do you have that?

Mr. DOTSON. I think Mr. Gonzalez has that. We can file that for the record, or we can ask Mr. Gonzalez directly.

Senator ABDNOR. If you have it, fine.

Mr. GONZALEZ. We can be more specific, Mr. Chairman, on the record, but in those cases that need immediate attention, we do give them immediate attention under our strategy plan.

I am referring, of course, to those cases where the issue is reinstatement or possible unlawful discharge. We do move quickly on those cases.

Does this respond to your question?

Senator ABDNOR. Yes; and then the average one does take much longer to process, I suppose.

Mr. GONZALEZ. We can give you information on that for the record.

[The information follows:]

PROCESSING VETERAN COMPLAINT CASES

Some complaints can be resolved readily—or the same day they are received—by a telephone call and a brief explanation of the statute to the employer. Other cases, such as those involving a dispute as to the facts and thus requiring investigation; or those involving disagreement as to the application of the statute and therefore may need a case conference with the parties or may warrant litigation; these take considerably more time. Cases involving reinstatement or unlawful discharge receive first priority. Cases involving other issues, such as seniority, status, rate of pay or pension entitlements, are worked on a first-in, first-out basis. Overall, currently the average time it takes to process a case from opening to closing is 103.1 days.

PLANS FOR REDUCING BACKLOG

Senator ABDNOR. We will probably have additional questions for you. A lot of them come to mind, but I would rather than take a lot of time today say a lot of them can very well be answered in writing. And we look forward to submitting some.

Do you have any plans for speeding this up or reducing this backlog? Or is it just your hopes that the economy is going to get better and people will find jobs and have less need?

Mr. GONZALEZ. Well, we have a number of productivity measures underway that will address the possible or probable elimination of time that we can save in terms of paperwork, especially on those cases that are not actionable and that we can respond to right away without any unnecessary review.

Mr. GERMAN. At this time, Mr. Chairman, it does not look as if the backlog will be quite as bad in 1982 or 1983 as we projected in this budget. As you know, this was put together some time ago.

The current number of cases in the pipeline at the present time stands around the 700 level. The projection through the end of the year leads us to conclude it will not be quite as bad as you see in these numbers before you today.

Senator ABDNOR. Good. I guess maybe it is understandable to have the large projection with the economy like it is, but we also know that certainly, if that were to occur, the backlog could to a great degree have a heck of a wallop and have a lot of people screaming at you.

I was wondering how it was. But you don't foresee any great problems handling that?

Mr. GERMAN. I think, sir, it will rise beyond what it was at the end of 1981, but not to the levels, hopefully, we suggested in the budget year before you. There have been some productivity improvements which we expect to continue to enable us to handle these cases better and more quickly.

Senator ABDNOR. Fine.

Mr. ST. CYR. I might also add that those cases that are in the backlog are not priority 1 cases. They do not involve reinstatement-type issues. And we are working on them from the oldest case first method so that we don't face any problems at all where timeliness is concerned.

We reduce them on the basis of the first one in is the first one out.

PAPERWORK REQUIREMENTS

Senator ABDNOR. Fine.

You do have a lot, obviously, of paperwork in your office. I guess no one can deny that, with the different areas you work in. But I am sure you made some progress in fiscal 1982.

But paperwork seems to be on the rise again in 1983. For example, the number of reports filed under the Landrum-Griffin Act is projected to increase by 8 percent. Also, the Department is expected to receive 1 million reports under ERISA the same year, the same as you had in 1981.

Now, what are you doing with all this paper?

Mr. Dotson. Most of that paper is essential to the enforcement of the statutes Congress has given us to enforce. And, of course, a lot of that increase is just the result of more people or more entities becoming subject to reporting requirements.

We are also cutting back as much as we can within the framework on the reporting requirements.

Senator Abdnor. Then, do you find we here in Congress talking one way about cutting out paperwork and giving you more and more to do?

I am not trying to get you in trouble with Congress, but I know sometimes we are guilty of that. Has that happened in the last year?

Mr. Dotson. I don't believe that you have given us more. I think it is just a product of the laws that are already there in operation, the laws and more people becoming subject to them.

Senator Abdnor. I know this is a hard thing to answer in view of the fact that there is a record of greater and greater paperwork, but do you feel that you are making some headway in slowing down the necessity of all the paperwork that has been required in the past? Are you slowly making some headway on that?

Mr. Dotson. I feel that we are.

Senator Abdnor. You must have great amounts of it to do, coming in at you all the time. What plans do you have for simplifying and reducing the amount of paperwork imposed on unions and management? Are you working in that area to reduce that?

Mr. Dotson. If you would like some detail, the Administrator of the Pension and Welfare Benefit program, Mr. Clayton, can give it to you or we can submit more for the record.

Senator Abdnor. Well, if it is available, not in long detail, it would be great.

Mr. Clayton. Senator, I am sure undoubtedly, the greatest paperwork burden in LMSA is the ERISA paperwork burden. We have a paperwork task force which should be reporting within a matter of weeks which will give us the options as to what can be done administratively with the legislation.

In the meantime, we have deferred the filing date for the SPD, summary plan description, with the Federal Government for a year. The deferral regulation, which is out now, will give us additional time to complete a related regulation which we are working on which simplifies the content and the manner of distribution of the summary plan description. That regulation should be out shortly.

Also, a regulation dealing with simplifying the requirements of the summary annual report for small plans and its method of distribution should be out shortly.

We are in the anomalous position of having to issue regulations in order to deregulate and to reduce the paperwork burden. But in those two areas, summary plan description and SAR, we will have regulatory proposals or deregulatory proposals out within a couple of months. And at the same time, we will have the additional report of the paperwork task force which should suggest other things that we can do.

ERISA

Senator ABDNOR. While we are on the subject of ERISA, the General Accounting Office has found certain reports filed under ERISA are seldom used, and many of the reports that are filed are inaccurate and incomplete. They went on to say that they recommended a two-pronged program of reducing the unnecessary reports and improving accuracy of the reports that are really essential.

Are those some of the areas you are talking about that you are working on?

Mr. CLAYTON. Yes, Senator. I think the major criticism as far as the unnecessary report being filed with the Department of Labor referred to the summary plan description being filed with the Federal Government. That is one of the areas we are working on in particular as far as that recommendation goes.

We are reviewing all the paperwork requirements, including the annual report, to determine, make sure, whatever we are asking for, we really need. And if we don't need it, we will eliminate it.

PREPARED STATEMENT AND SUBMITTED QUESTIONS

Senator ABDNOR. Very good.

I have many, many other questions here, but I know they can be answered very simply in writing. So we won't ask you any more at this time, but we will, if you don't mind, be submitting probably some additional questions to you that you can provide answers in writing at the same time you return the corrected hearing transcripts.

We thank you very, very much for all your people coming up here today. Thank you.

[The statement and the questions, which were not asked at the hearing but were submitted for response for the record, follow:]

STATEMENT OF DONALD L. DOTSON

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to appear before you as Assistant Secretary of Labor for Labor-Management Relations to present the budget request for fiscal year 1983.

The fiscal year 1983 request is $60,153,000 and 1,192 positions. This is an increase of approximately 8% in dollars and approximately 14.5% in positions. A small part of the increase will cover increased costs of salaries, travel, executive development and training, equipment, and ERISA forms processing. The remaining portion of the increase is associated with enforcement of the Landrum-Griffin Act.

The appropriation for the Labor-Management Services Administration covers several program areas, principally; labor-management standards enforcement, pension and welfare benefit activities, veterans' reemployment assistance, and labor-management policy and services.

Our overall emphasis for fiscal year 1983 is to dramatically strengthen our enforcement capabilities. Strong and fairly administered enforcement programs are one way we in LMSA can help insure that the Department's mandate "to foster, promote and develop the welfare of the wage earners of the United States" is carried out according to the letter and spirit of the law.

I would now like to mention some of our accomplishments, current plans, and outline the initiatives for 1983 and the effects these changes will have in future years.

In 1982, the Labor-Management Standards Enforcement program's highest priority will be given to supervising two national election reruns. Both reruns are the outcome of separate out of court agreements between DOL and the International Association of Fire Fighters and the American Federation of Government Employees. Also in early 1982, the International Compliance Audit Program, a program designed to provide a quick discovery method to test and evaluate a union's level of compliance with civil and criminal provisions of the Labor-Management Reporting and Disclosure Act, was implemented on a regular basis.

During 1983, criminal investigations involving embezzlement of union funds, plus union financial audits will continue to be the main thrust of LMSA's enforcement program. Our 1983 budget submission includes a request for 150 positions to begin stepped up efforts to combat criminal misuse of funds and other serious violations of the Labor-Management Reporting and Disclosure Act. The increase will enable us to create a more visable and effective enforcement presence in the labor community.

In the Pension and Welfare Benefits program during 1982, emphasis is being placed on following through with new initiatives and policies begun in fiscal year 1981, reflecting a strong commitment to aggressively enforce ERISA's fiduciary provisions and to eliminate unnecessary regulatory requirements. Priority is being given to conducting investigations and processing prohibited transaction exemption requests.

During 1983, the foremost objectives will be protecting the rights of participants and beneficiaries, and enforcing the ERISA's provisions to safeguard the financial integrity of plans. Implementation of initiatives regarding strengthened enforcement and prudent deregulation will promote and facilitate compliance with ERISA during FY 1983. In addition, the commitment to concentrate on issuance of class exemptions will result in the processing of fewer requests for exemption from the prohibited transaction provisions. As a result of continuing efforts to reduce and simplify regulatory requirements, fewer rules will need to be issued during fiscal year 1983, and pension and welfare plans will benefit from reduced compliance costs.

In the Veterans' Reemployment Rights program during 1982 and 1983, special emphasis will be placed on mediation services. This emphasis will prompt voluntary compliance and reduce dispute resolution time. In addition, concentrated efforts will be extended toward resolving multiple claims through a single investigation or litigated claims such as in class action suits when all efforts at mediation are unsuccessful.

In Executive Direction, Management and Support during 1982 and 1983, the highest priority will be given to improving LMSA's internal accountability and management information systems. This overall effort will continue to emphasize the development of new and better methods and systems for accomplishing the Agency's objectives despite lower resource levels. Priorities in this area will also focus on streamlining the organizational structure of line and staff units, improving administrative procedures and augmenting the skills and abilities of employees to increase employee utilization.

In the labor-management policy and services area, two organizations were eliminated in fiscal year 1982: the Division of Public Employee Labor Relations and the Office of Construction Industry Services. Neither program was legislatively mandated. In addition, all contract research funds were eliminated. As a result, concentration will be directed, in both 1982 and 1983, to legislatively mandated programs such as the Urban Mass Transportation Act and the Rail Passenger Service Act.

During 1982, with the absence of contract research funds, emphasis will be placed on completing all outstanding contracts, and in FY '83 shifting to in-house studies directed toward the top priority needs in the administration and enforcement of the Labor-Management Reporting and Disclosure Act and other jurisdictional laws.

Finally, during 1982, activities directed toward encouraging the development and implementation of voluntary labor-management programs will begin in-house employee participation circles and will develop information and technical assistance resources for execution of an outreach effort for 1983.

Mr. Chairman, I thank you for the opportunity to present our programs to the subcommittee. My staff and I will be glad to respond to any questions you may have.

BIOGRAPHICAL SKETCH

Donald L. Dotson

Assistant Secretary of Labor
for Labor-Management Relations
Department of Labor

Donald L. Dotson was named by President Reagan on April 17, 1981, to be Assistant Secretary of Labor for Labor-Management Relations. He was confirmed by the Senate on July 8, 1981.

In this position, Dotson has overall responsibility for the Labor Department's labor-management relations policies and activities. He also serves as administrator of the Department's Labor-Management Services Administration which administers such key laws and programs as the Employee Retirement Income Security Act of 1974, the Labor-Management Reporting and Disclosure Act of 1959, and the Veterans' Reemployment Rights law.

Dotson came to the Labor Department from Wheeling-Pittsburgh Steel Corporation where he had been chief labor counsel since 1976. There he advised corporate officials on a wide range of labor issues including collective bargaining, industrial relations, occupational safety and health, and equal employment opportunity. He also supervised corporate attorneys handling cases involving arbitration, hearings before human relations and civil rights commissions, workers' compensation and employment security agencies, and the National Labor Relations Board.

Before joining Wheeling-Pittsburgh, Dotson worked as a labor attorney for Western Electric Company, Inc., and as labor counsel for Westinghouse Electric Corporation and Subsidiaries.

From 1968-73, Dotson was an attorney for the National Labor Relations Board.

Dotson was born on October 8, 1938, in Rutherford County, N.C. He holds a Bachelor's Degree in Political Science from the University of North Carolina (1960) and a Law Degree from Wake Forest University (1968).

A member of the Pennsylvania, North Carolina, and Supreme Court Bars, Dotson served in the U.S. Navy from 1960-65.

Dotson resides in Arlington, Virginia.

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

OFFICE OF LABOR-MANAGEMENT POLICY DEVELOPMENT

The budget contains funds for the Office of Labor-Management Policy Development whose mission is described as providing staff assistance in formulating labor-management relations policy and legislative initiatives.

Question: How many positions are assigned to this office, and what is the cost?

Answer: The Office of Labor-Management Policy Development (OLMPD) is composed of two Divisions -- Policy Development and Research and Analysis. For FY 1983, 10 positions are being assigned to this activity with a proposed total budget of $744,000.

Question: What new legislative initiatives or major changes in policy can be attributed to the efforts of this office during the last three years?

Answer: Each year the Assistant Secretary for Labor-Management Relations receives about 150 requests for comments from the Solicitor's Office on legislative and administrative proposals. These requests are reviewed by OLMPD and, following consultation with the Assistant Secretary's office, responses are transmitted to the Solicitor's Office. Priority attention is accorded to measures impacting either on labor-management relations or LMSA programs, as the agency is relied upon by the Solicitor to play a lead role in the formulation of a Departmental position on these measures.

With regard to legislative initiatives, the Senate currently is moving to strengthen the labor bribery provisions of the Labor-Management Relations Act and the convict bars in the Labor-Management Reporting and Disclosure Act (LMRDA) and the Employee Retirement Income Security Act (ERISA) through the Labor-Management Racketeering Act, S.1785. Both LMSA and the Department are devoting substantial effort to reviewing and suggesting improvements in that key legislation.

The role of this Office extends also to the labor relations activities of international bodies such as the International Labor Organization and the Organization for Economic Cooperation and Development. It also supports the Department-to-Ministry program which has been established with several labor ministries to develop and share mutually beneficial information in various areas, including labor-management relations. The Assistant Secretary and OLMPD staff have directly participated, in recent years, in several international activities.

Question: Is any money included for contract research in Fiscal Year 1983, and if so, for what purposes?

Answer: No funds are provided for contract research in Fiscal Year 1983.

Question: Why can't this Office be eliminated and its functions absorbed by policy and program evaluation staffs attached directly to the Office of the Assistant Secretary for Labor-Management Relations and the Office of the Secretary of Labor?

Answer: While it is the responsibility of the Office of the Assistant Secretary for Labor-Management Relations both to provide guidance in major policy areas and to evaluate broad program and management activities, there is no staff assigned directly to the Assistant Secretary's Office for this purpose. There are, however, several positions in the Office of Management's Division of Planning, Budget and Accountability (DPBA), which are utilized, primarily, to assess the efficiency and effectiveness of LMSA program operations. These reviews help to assure that programs are carried out consistent with their intended purpose and that any underutilization or misutilization of resources is identified and eliminated.

On the other hand, the policy activities of OLMPD relating to matters within the program areas of LMSA and the Department concentrate largely on legislative or administrative changes affecting the substance of such programs, as distinguished from details of their operations or implementation. Further, OLMPD assists in formulating policy with regard to many matters which are outside Departmental program areas; for example, legislative proposals relating to laws administered by other agencies, such as the National Labor Relations Act, the Railway Labor Act, the Federal Service Labor-Management Relations Statute, and a number of basically non-labor statutes that affect labor-management relations. Since the Assistant Secretary plays a lead role in formulating Departmental positions on these issues, there must be available, resources of the type provided by OLMPD.

In addition, the Secretary of Labor has no resources available to absorb policy and program evaluation functions. Therefore, since the Assistant Secretary for Labor-Management Relations does play the lead role in formulating Departmental positions on legislative or administrative changes in the area of labor-management relations, it does not appear to be sound, effective management to shift responsibilities from the office possessing the required expertise.

OFFICE OF LABOR-MANAGEMENT RELATIONS SERVICES

The Office of Labor-Management Relations Services oversees labor protective arrangements under certain Federal statutes.

Question: What portion of the Office's activities are pursuant to legislative mandates?

Answer: All activities of the Division of Employee Protections are carried out pursuant to legislative mandates.

Question: How much money and manpower is expended under each statutory mandate?

Answer: The Division has 21 budgeted positions. Budget authority figures and allocation of positions by statute are as follows:

Legislation	Budget Authority	Budget Positions
Urban Mass Transportation Act of 1964, as amended (P.L. 88-365)	$307,000	6.5

Legislation	Budget Authority	Budget Positions
Rail Passenger Service Act of 1970, as amended (P.L. 91-518)	18,000	.5
Federal-Aid Highway Act of 1973 (P.L. 93-87)	14,000	.5
Surface Transportation Assistance Act of 1978 (P.L. 95-599)	244,000	5.0
Redwood National Park Act of 1978, as amended (P.L. 95-250)	290,000	6.0
Airline Deregulation Act of 1978 (P.L. 95-504)	85,000	2.0
High-Speed Ground Transportation Act of 1965, as amended (P.L. 89-220)	-0-	-0-
National Mass Transportation Assistance Act of 1974 (P.L. 93-503)	-0-	-0-
Juvenile Justice and Delinquency Prevention Act of 1974 (P.L. 93-415)	-0-	-0-
Nurse Training Act of 1975 (P.L. 94-63)	-0-	-0-
Developmentally Disabled Assistance and Bill of Rights Act (P.L. 94-103)	-0-	-0-
Health Planning and Resources Development Amendments of 1979 (P.L. 96-79)	-0-	-0-
Mental Health Systems Act (P.L. 96-398)	-0-	-0-
Social Security Disability Amendments of 1980 (P.L. 96-265)	-0-	-0-
Northeast Rail Service Act of 1981 (P.L. 97-35)	-0-	-0-
	$958,000	20.5

One-half of a position is utilized for activities relating to the statutes not showing a dollar or position figure.

Question: What is the nature of the services provided by the Office?

Answer: The Division of Employee Protections (DEP) is responsible for carrying out the Secretary of Labor's responsibilities under 15 statutes. Six of these statutes, partly because of their consultive and planning nature, no longer require ongoing activity by this Division. Of the nine remaining statutes, five are applicable to the employee protection requirements of Section 13(c) of the Urban Mass Transportation Act of 1964, as amended to grants of assistance. Relative to services provided under Section 13(c) the Department refers copies of grant applications to affected labor organizations and notifies applicant(s) of such referrals. We also encourage parties to reach agreement on protections satisfying the requirements of Acts, as well as provide technical and/or mediatory assistance as needed. If an agreement is reached, it is reviewed to insure compliance with statutory requirements; if no agreement is reached, the Secretary of Labor is empowered to establish terms upon which certification will be based.

Under the remaining four statutes, our services include acting as final arbiter in cases involving disputes between Amtrak or individual railroads and non-union employees; providing a benefit schedule for employees who were affected by the restructuring of northeast rail carriers; providing full earnings protection, continuing health/welfare and pension benefits to qualified employees, and serving as the final level of administrative appeal for cases involving claimant eligibility under the Redwoods Act; and we administer the first-right-of-hire provision under the Airline Deregulation Act.

Question: How much discretion does the Department have in determining the level of these services?

Answer: The Department has no discretion in determining the level of services in any of the above statutes. The Secretary's role in every instance is concisely defined.

Question: Why can't the relevant laws be amended to require that fees be collected from the affected parties in order to defray the Department's costs?

Answer: The Labor-Management Services Administration is currently reviewing this, and a number of other areas where it may be possible to collect fees in order to defray the Department's costs.

OFFICE OF CONSTRUCTION INDUSTRY SERVICES

Although this Committee urged in its last report that the Office of Construction Industry Services be retained, and to the degree possible, the activities of the five regional committees, these offices were nonetheless closed during fiscal year 1982.

Question: Why has the Department chosen to disregard the advice of this Committee?

Answer: LMSA and the Department did carefully consider the committee's advice in our review of all activities and priorities in LMSA in relation to our reduced budgetary levels. We believe that our decisons, which accord highest priorities, in order, to statutory, direct enforcement, enforcement support, and other activities, to be responsible ones. As the Office of Construction Industry Services was neither statutorily mandated nor enforcement related, it was eliminated. To do otherwise would have resulted in an adverse impact on statutory or enforcement efforts.

Question: What impact will the closure of these offices have on the coordination of public construction with state and local construction?

Answer: There is no definitive answer to this question. The benefits variously ascribed to the program in the several evaluations to which it was subjected (including one by the GAO) were subjective in nature. Not being able to quantify its impact, we can not quantify the impact of the closure of committee offices.

Question: Is anyone planning to replace the regional construction bid calendars provided by these offices?

Answer: Not that we know of, despite considerable effort to make it clear that we would fully cooperate in transferring the regional construction bid calendars into other public sector or private hands.

OFFICE OF LABOR-MANAGEMENT STANDARDS ENFORCEMENT COMPLIANCE AUDIT PROGRAM

The Office of Labor-Management Standards Enforcement has installed a new Compliance Audit Program designed to detect civil and criminal violations by union officials.

Question: How does this program differ from the regular audits and investigations conducted by the Office?

Answer: The Compliance Audit Program (CAP) is intended as a penetrating survey-type audit, the primary objectives of which are to detect criminal or civil violations of the Labor-Management Reporting and Disclosure Act (LMRDA), provide effective technical assistance to union officials to reduce the number of future violations, and create a visible enforcement presence in the labor community.

The Compliance Audit Program (CAP) is not a full scale audit like the regular audit. Instead, investigators use targeting and audit techniques specifically designed to focus their attention on records that are most likely to reveal embezzlements and other LMRDA violations. An investigator using the compliance audit procedure can check the financial records of a union for serious violations in about five days compared to 15 or more days it takes for the full scale audit. The CAP provides the most productive use of resources and the more effective way to carry out responsibilities to protect union funds and the rights of union members.

Question: How many violations were detected through this program?

Answer: In 1981 Labor-Management Standards Enforcement (LMSE) completed 903 CAP audits. There were approximately 100 embezzlement and other cases which resulted from these audits.

Question: How effective has the program been compared to other enforcement methods?

Answer: The CAP program has provided an enforcement presence in the organized labor community for the first time in many years. The number of audits conducted in 1981 increased by 1,029 percent over all audits conducted the previous year. The fallout of embezzlements in 1981 is testimony to the potential of this program.

Question: Why are no compliance audits planned in Fiscal Year 1982 and why is the number scheduled for 1983 almost double the number conducted in 1981?

Answer: Workload projections for FY 1982 were drafted at a time when it appeared that LMSE would have to divert all of its resources, after its regular mandatory work, to handle two national union elections. Agreements with the International Association of Fire Fighters (IAFF) and the American Federation of Government Employees (AFGE) requires LMSA to supervise the nominations and elections of delegates from 3,347 local affiliates throughout the United States and overseas to their national conventions during FY 1982. Since then the Department has been able to provide partial relief in the form of 55 employees from other agencies in the Department. As a result, work will be accomplished during 1982 in other high priority activities such as audits and embezzlements.

Two factors enter into the number of compliance audits scheduled for 1983. First, the audit workload projections are based on resources which include the enhancement requested in the FY 1983 budget request. Second, the percentage of total production time allocated to this activity increases in FY 1983 to 44 percent from 25 percent in FY 1981 due to revision of LMSE's Enforcement Strategy Document.

OFFICE OF LABOR-MANAGEMENT STANDARDS ENFORCEMENT ADDITIONAL POSITIONS

The 1983 Budget requests 150 new positions to conduct embezzlement investigations and on-site audits. This represents a 40 percent increase in staff for the Office of Labor-Management Standards Enforcement.

Question: What evidence is there that the incidence of embezzlement and other financial violations has been increasing at a rate sufficient to justify a 40 percent increase in staff?

Answer: It is difficult to measure with reasonable accuracy the dimensions of union corruptions in the country. In FY 1981 Labor-Management Standards Enforcement (LMSE) launched its new compliance audit program - a major enforcement activity - and the experience to date has shown that there exists a serious level of embezzlement and other financial violations of the Labor-Management Reporting and Disclosure Act (LMRDA) in the organized labor community. There were 903 compliance audits conducted in 1981 and 93 uncovered possible embezzlement or misuse of union funds violations. In addition, compliance audits uncovered many other civil violations of the LMRDA such as reporting deficiencies and inadequate bonding.

The results of the compliance audit program to date lends support to the concerns regularly expressed by both Congress and the media about corruption in organized labor. As far back as 1978, the Senate Permanent Subcommittee on Investigations commented on the Department of Labor's inadequate resources to effectively enforce the criminal provisions of the LMRDA, and recommended that the Secretary of Labor determine the additional resources needed to effectively enforce the law. Given the limited available personnel and the pressure of other statutory enforcement responsibilities, present personnel are not sufficient to achieve the desired frequency of union audits needed to detect criminal violations of the law. There are over 23,000 reporting unions with annual receipts of over $10,000. Over 7,000 of these unions have receipts of more than $100,000. With the present number of personnel, LMSE can audit these 23,000 unions only once every 30 years. Many of these unions have never been audited in the 22 years since the LMRDA was passed and many never will be without significant additional personnel.

The 40% increase request is based on a needs analysis conducted by the agency. This increase would enable LMSE to conduct audits of labor organizations at intervals of between five and seven years rather than once every 30 years as is now the case.

Question: If embezzlement investigations are so important why are none scheduled in Fiscal Year 1982?

Answer: Workload projections for FY 1982 were drafted at a time when it appeared that LMSE would have to divert all of its resources, after its regular mandatory work, to handle two national union elections, The International Association of Fire Fighters and The American Federation of Government Employees.

Since then the Department has been able to provide partial relief to LMSE in the form of 55 employees from other agencies in the Department. As a result, some work will now be accomplished in other high priority activities such as audits and embezzlements investigations. In the high priority activities our projections now call for the completion of 263 embezzlements in 1982 and 478 compliance audits, in addition to 359 election investigations and supervised elections.

LEGISLATION TO BAR CONVICTED PERSONS

The Landrum-Griffin Act prohibits persons from holding union positions if they have served prison terms for certain crimes. Legislation has been introduced (S.1785) to bar from union office persons who have been convicted of certain crimes even if they have not yet been imprisoned.

Question: Is existing law adequate to protect union members or does the Department support the amendments contained in S. 1785?

Answer: The Department supports the intent of S. 1785 to strengthen the provisions of the LMRDA which would prohibit persons convicted of certain crimes from serving in positions of trust or influence in labor organizations.

This Department supports, in particular, the proposed amendment to Landrum-Griffin under which persons convicted of certain crimes would be disqualified from the time of conviction, notwithstanding the invocation of any appeal. Under the present law, persons convicted of crimes can and do continue to exercise great influence in the labor movement pending their exhaustion of the appeal process. The Department also supports the provisions of S. 1785 which would extend the period of the statutory bar from 5 years to 10.

Bill S. 1785 would considerably broaden the positions for which conviceted individuals would be barred. The Department supports that general intent and, in particular, the extension of the convict bar to clerical and custodial positions. Such an amendment would close a significant loophole in the present law.

Secretary Donovan's statement on S. 1785 presented to the Senate Labor Subcommittee on February 3, 1982, discussed in greater detail the provisions of this important legislation. This Administration has been working with the Subcommittee to develop the most effective legislation possible to ensure that unions, as well as employee benefit plans, are rid of corrupting influences.

ELECTION RE-RUNS

During 1982, the Labor-Management Services Administration is experiencing two national election reruns at a cost of 89 staff years and $3 million. These have diverted a substantial amount of manpower away from other enforcement activities.

Question: Why does it take so much staff time to supervise two elections?

Answer: Combined, these two national election reruns constitute the largest rerun undertaking LMSE has had to supervise to date. Together, both unions comprise approximately 3,000 affiliates primarily located throughout the United States, but also in Canada and a few other locations overseas. Both unions entered into out of court agreements with the Department under which LMSE is supervising on-site at each of their affiliate locals the nominations and elections to their national conventions. Scheduling in many instances extends beyond the normal workday time frames. In addition, both unions will complete the election process with conventions in August 1982 and LMSE will supervise the officer election portion of those conventions.

Question: What discretion does the Department have in determing the level of services to be furnished?

Answer: The level of services the Department must furnish was determined from the agreements entered into between the Department and the unions. Out of court settlements gave the Department two prime advantages - flexibility in scheduling, and a longer time spread to complete the reruns which meant fewer people needed at any one time. Also, since 300 locals were located in Canada, which is outside our jurisdiction, it was agreed to let those locals conduct their own reruns and certify the results back to us.

Question: What assurances can you provide that there will not be a similar drain on staff resources in fiscal year 1983?

Answer: There are no assurances since the election activity is virtually uncontrollable. The LMRDA requires full investigation of every complaint. A potential major election investigation may result from the national election of United Mineworkers Union which is scheduled for November 1982. Total membership of the Mineworkers Union is 307,944. Should this or another major election investigation occur, the decision rests with the Secretary whether to utilize only LMSA personnel or provide relief in the form of resources from other agencies within the Department.

Question: Why shouldn't the law be amended to charge the union for the cost of these free services?

Answer: Labor-Management Standards Enforcement is currently examining the possibility of amending the LMRDA to provide for assessing a labor organization for extraordinary costs incurred by the Department of Labor in supervising an election of officers of that organization.

RESULTS OF ENFORCEMENT ACTIVITIES

Under ERISA and Landrum-Griffin, the Department is empowered to seek both civil and criminal remedies against violators. However, in past years, there seems to have been a reluctance to use these remedies.

Question: Over the last five years, how many criminal cases were referred to Justice, how many were prosecuted, and how many convictions were obtained?

Answer: Over the past five years the Labor-Management Standards Enforcement program (LMSE) referred to Justice 420 action embezzlement cases involving alleged criminal violations of the Labor-Management Reporting and Disclosure Act of 1959, as Amended. However, this figure does not totally reflect an accurate picture of LMSE's actual commitment to criminal work over this period, since many other cases resulted in declination by Justice prior to the preparation and referral of an Action Report of Investigation. Consequently, these cases, also involving criminal violations, do not show up as referred to Justice. Only within the past year have we started maintaining data regarding these cases, as well as data pertaining to the various reasons Justice declines prosecution following our reference of an action case. During the same five year period Justice prosecuted 259 defendants resulting from LMSE investigated cases and obtained 215 convictions. Cases not prosecuted were declined by Justice for a number of reasons, including de minimus amount, restitution, surety recovery, immunity granted, statute of limitation, etc.

Under ERISA, 71 formal referrals of possible criminal violations were made to the Department of Justice during the past five years. Unfortunately, data for a five year period is not available relative to prosecutions or convictions. However, during FY 1981, 30 referrals were made and an additional 17 have been made so far in FY 1982.

According to data received from DOJ, in calendar year 1981, 25 convictions were obtained for ERISA related criminal violations.

Question: What accounts for the relatively small number of criminal cases?

Answer: The number of criminal cases is directly reflective of the resources available to handle the work. Our enforcement capability in the Labor-Management Standards Enforcement program has undergone serious deterioration in recent years due to the declining number of personnel available to perform criminal work. Nevertheless, as of the end of March 1982, LMSE had 1290 ongoing investigations, 300, or 23%, of which involved potential embezzlement of union funds. In 1981, 903 CAP audits were completed and the fallout of embezzlement investigations from these audits amounted to 9.9%.

An LMSE Enforcement Strategy Document issued in FY 1981 and refined in FY 1982 commits substantial resources to criminal investigations and financial audits of labor organizations. Eighty percent of LMSE's total resources, after elections, are now allocated to these activities.

With regard to ERISA, the Department has focused its limited resources on civil violations in the past. With the increased emphasis that the Secretary has placed on detecting criminal violations, we expect to increase the number of criminal referrals in the future.

Question: Over the last five years, how many civil actions were filed and how many of these resulted in civil fines?

Answer: Since 1977, the Labor-Management Standards Enforcement program has filed more than 175 civil action suits. None have resulted in civil fines since there are no provisions in the law for fines in civil cases. Primarily, union officer election violations make up most civil action cases under the LMRDA and the provisions of the law only require that the election be set aside where the violations affect the outcome.

Under ERISA, the Department has filed approximately 100 actions as the plaintiff over the last five years. Statistics on the results of these actions are not automated and therefore are not readily available for the five year period; however, as a result of a special project, we do have information on cases resolved during the last two years. In the 31 cases resolved during the most recent two year period, $3,817,640 in plans assets were recovered from fiduciaries and returned to employee benefit plans. An additional $46,200,000 in improper loan commitments or prohibited transactions were reversed. In nine of these cases, fiduciaries acting improperly were removed from their positions in the plans, and in one case an independent asset manager was appointed.

Under ERISA, fiduciaries are personally responsible for losses caused by their breaches. Through civil actions the Department seeks to recover plan assets lost or endangered through breaches of fiduciary responsibility. In the case of a prohibited transaction, the Department seeks reversal of the transaction and refers the transaction to the Internal Revenue Service, which imposes civil fines for such transactions. Civil fines are not imposed by the Department.

Question: Do you foresee a greater number of criminal referrals over the next few years?

Answer: Yes. A four year plan has been developed for the Labor-Management Standards Enforcement program to regenerate its criminal enforcement program under the LMRDA. The major elements of the plan are, (1) major increase in frequency of union audits (2) application of new audit tools, such as CAP and I-CAP, (3) employment of more sophisticated investigative and auditing techniques including computer-assisted audits of reports and computer assisted targeting, and (4) timely investigations of complaints, especially where there are indications of criminal violations.

With regard to ERISA, we expect the number of criminal referrals to increase as a result of the new policy regarding the investigation of criminal matters instituted recently.

The Department of Labor has been criticized in the past for not pursuing criminal violations of ERISA employee benefit plans, while it is true that our major responsibilities for protecting plans are civil in nature, we also have a responsibility to be alert to criminal violations.

The Department's new policy on ERISA enforcement is that we will pursue any evidence of criminal violations discovered in the course of our investigations and bring such evidence to the attention to the Department of Justice and the Federal Bureau of Investigation. To fulfill this obligation, we plan to change our current enforcement procedures and provide additional training for our investigators to assure that more comprehensive criminal referrals are made to the agencies. The Department of Labor will not condone or ignore any criminal wrongdoing.

TEAMSTERS INVESTIGATION

In October 1981, GAO testified that Labor's investigation to reform the multi-billion dollar Teamsters' Central States Pension fund was inadequate, ineffective and uncoordinated, and left many unresolved problems.

Question: What is your response to the GAO criticism?

Answer: The GAO has sent its draft report entitled "Inadequate Ineffective and Uncoordinated Investigation to Reform the Multi-Billion Dollar Teamsters' Central States Pension Fund" to the Department for comment. The report contains 13 recommendations to the Secretary. In most cases the Department concurs with the GAO and has taken, or is taking, action to implement the recommendations.

Question: What has the Department done to improve its current investigation of the Fund, its coordination with IRS and Justice and its dealings with Fund officials?

Answer: In May 1980, the Department established a special investigations unit in Chicago to handle the investigation of the Fund under the current trustees. This unit is staffed with seven full-time investigators and one supervisor. Each week the supervisor from the special unit meets with the supervisor of the IRS investigation to discuss and coordinate their information and activities. In addition, once a month the supervisor meets with a representative from the Department of Justice Organized Crime Strike Force to discuss the investigation.

This special investigations unit has had reasonably good relations with Fund officials. Regular weekly meetings with fund officials have been discontinued since there are few problems to discuss. Meetings currently take place only when the investigators believe a problem exists such as nonexpeditious handling of an information request.

Question: What is the status of the Government's various lawsuits against the former and current Fund trustees?

Answer: As a result of its original investigative effort, the Department of Labor on February 1, 1978, filed civil suit in the U.S. District Court for the Northern District of Illinois, Eastern Division, against 17 former Fund trustees and 2 officials to recover losses resulting from their alleged mismanagement and breaches of their fiduciary duties.

This suit is in the discovery phase and is not expected to be adjudicated in the near future. There were numerous delays during the first two years of the litigation, due to discovery disputes between Labor, defendants, and the Pension Fund and also due to the fact that the case was assigned and reassigned to four different judges. The case has now been permanently assigned to U.S. District Judge James B. Moran, who has acted relatively quickly on pending motions in the case.

In addition, the case has been complicated by the consolidation of discovery with the discovery in several other suits involving the Central States Pension Fund which were brought by private litigants. Discovery, however, has proceeded on an orderly basis, and at the present time, the Department of Labor has deposed over seventy persons involved in the transactions named in the complaint.

One important motion remains pending before the court. This is Labor's motion to amend the complaint. The motion would: (a) add nine more loan transactions to the case as examples of defendants' imprudence; (b) add the Pension Fund (an entity distinct from its former officials) as a party to the litigation; and (c) clarify that the case seeks injunctive relief in the form of modified investment procedures for the Pension Fund, in addition to monetary recovery from defendants. The Secretary's motion to amend was filed in April 1981. The court has indicated that it will rule upon the motion within the next month or two.

Three appeals taken on discovery issues have recently complicated proceedings. In one appeal, defendants are attempting to obtain certain internal reports and memoranda that Labor contends are privileged work product materials. In another appeal, the Pension Fund is challenging a district court order requiring the disclosure and production to Labor of documents claimed to be non-discloseable under the attorney-client privilege. Finally, one witness whom Labor attempted to despose has appealed an order rejecting his Fifth amendment claim and requiring him to testify. Decisions on these appeals are not expected in the near future.

A second action was filed in October 1978, against seventeen present and former trustees of the Central States, Southeast and Southwest Areas Health and Welfare Fund (Health and Welfare Fund).

The second complaint focuses on the relationship between the Health and Welfare Fund and Amalgamated Insurance Services Agency, Inc. (Amalgamated). Under its contract with the Health and Welfare Fund, Amalgamated should process the medical reimbursement claims submitted by the participants, while taking care that the claims are paid only in accordance with the terms of the various plans.

The substance of the complaint is that (1) the contract was awarded to Amalgamated without prudent consideration of alternatives or reasonable competitive bidding; (2) the ongoing relationship with Amalgamated is imprudent because the Health and Welfare Fund lacks reasonable control over Amalgamated's activities and (3) the Health and Welfare Fund has imprudently raised its payments to Amalgamated, and (4) monetary and injunctive relief is required.

Labor's motion for preliminary relief was denied in November, 1978, and the Health and Welfare Fund's motion for summary judgment was partially granted in June of 1979. The Seventh Circuit reversed the latter order on June 24, 1980. As a result of the Court of Appeals decision, the case was assigned to a new judge late last year, and discovery began in earnest.

Thus far, Labor has taken significant documentary discovery from the Health and Welfare Fund and from Amalgamated's auditors. An earlier action to enforce an administrative subpoena for Amalgamated's documents is being pursued, although a final decision has been delayed for more than a year. A decision is expected soon.

However, as with the other action mentioned above, discovery is proceeding on an orderly basis. Hundreds of thousands of documents have been collected and are being analyzed to form the foundation for the depositions which will follow.

TEAMSTERS PENSION FUND

Under its agreement with the Federal Government, the Teamsters' Central States Pension Fund has appointed two independent firms to manage its assets. These contracts will expire next October.

Question: What is the Department doing to assure that the Teamsters' Central States Pension Fund continues to have independent managers to handle its assets?

Answer: The Department has sought, through negotiations and litigation, an enforceable decree which would require that the Teamsters' Central States Pension Fund maintain independent asset management in the future. These negotiations are currently being closely monitored by Judge Moran in Donovan v. Fitzsimmons. Whatever the outcome of these negotiations, the Department intends to pursue every available avenue to ensure that independent asset management continues beyond the expiration of the agreement between the Fund and the Equitable Life Assurance Society of America. It should be noted that the qualification letter issued by the Internal Revenue Service, certifying the tax-exempt status of the Fund, conditions that status on the maintenance of independent asset management. This measure, combined with those sought by the Department, should provide adequate assurance to the participants and beneficiaries that the assets of the plan are being handled by qualified professionals.

Question: What is the Department doing to prevent the former trustees from regaining control?

Answer: The control of plan assets is a major issue in the Department's efforts to protect the benefits of participants and beneficiaries. That is why the Department is making every effort to ensure that independent asset managers continue to manage the Fund assets. As long as independent managers handle the assets, the Department believes that the benefits of participants and beneficiaries will be adequately protected.

ADVISORY ACTIVITIES

In 1983, the Pension and Welfare Benefit Programs is reducing national office activity not directly related to enforcement, such as issuing advisory opinions, answering requests for information, and disclosing plan documents. However, all of these activities seem to be increasing at the Office of Labor Management Standards Enforcement which enforces the Landrum-Griffin Law.

Question: Why are these two offices apparently going in the opposite direction?

Answer: During the 1983 budget planning cycle some very difficult program priority decisions had to be made due to resource constraints. Generally, direct enforcement activities were given greater emphasis, particularly field enforcement activities. The effect of this strategy in the Pension and Welfare Benefit Programs was a reduction of activity in selected areas such as advisory opinions, information requests, and document disclosure.

In the Labor-Management Enforcement Program (LMSE), the FY 1982 workload estimates were finalized at a time when projections indicated the need to divert national office resources to meet the program's mandated obligation to supervise the national election reruns of the International Association of Fire Fighters and the American Federation of Government Employees. Since that time the Department has provided 55 employees to assist in this matter. As a result, national office staff will not be diverted to the extent anticipated and 1982 workload estimates involving technical assistance, inquiries, document disclosure, etc. will, in reality, be higher than those reflected in the 1983 budget submission and more comparable to FY 1981 and FY 1983 workload figures.

In summary, we do not believe those two programs are going in opposite directions, but we do deal with awkward workload projections in the LMSE area because of the impossibility to project the occurrence of election reruns.

Question: How will you discourage people from requesting copies of pension plans on file at the Department?

Answer: We have no plans to discourage anyone from requesting copies of reports. However, because of a reduction in disclosure room staff, requestors may have to wait longer for a response. In addition, fewer summary plan descriptions (SPDs) will be disclosed because we will have to spend more time locating each one. This extra time is a result of our stopping the microfiching of SPDs to save contract funds. We are not satisfied with this arrangement and are looking at changes that can be made to make our operations more cost effective.

Question: What effect will a reduction in advisory services have on future violations?

Answer: Reducing the number of advisory opinions issued by PWBP could have some adverse effect on the actions of plan administrators and others involved with employee benefit plans. PWBP issues advisory opinions (written statements applying ERISA to specific factual situations) on a wide range of difficult issues, for example, determining whether a certain individual is a plan administrator under ERISA, whether a certain plan is covered by ERISA, whether ERISA preempts a certain law, etc. These opinions not only assist the particular individuals requesting an opinion but assist all such individuals in similar circumstances.

We are hopeful that ERISA expertise has increased to an extent, and enough regulations have been issued, that the ERISA community can interpret the law without benefit of advisory opinions. We also intend to use speeches and responses to telephone inquiries to provide assistance and make our position clear.

PENSION BENEFIT GUARANTY CORPORATION

STATEMENT OF ROBERT E. NAGLE, EXECUTIVE DIRECTOR

ACCOMPANIED BY:

HENRY ROSE, GENERAL COUNSEL, OFFICE OF THE GENERAL COUNSEL
WILLIAM DeHARDE, DIRECTOR, OFFICE OF PROGRAM OPERATIONS
LAWRENCE MASLAN, DIRECTOR, OFFICE OF FINANCIAL OPERATIONS

SUBCOMMITTEE PROCEDURE

Senator ABDNOR. Next, we are going to hear from Mr. Robert Nagle, the Executive Director of the Pension Benefit Guaranty Corporation.

Mr. Nagle, we welcome you and your colleagues this morning. I will ask you to introduce the people with you.

INTRODUCTION OF ASSOCIATES

Mr. NAGLE. Good morning, Mr. Chairman.

On my left, immediate left, is Mr. Henry Rose who is the General Counsel of our agency.

And to his left is Mr. William DeHarde who is Director of our Office of Program Operations.

On my right is Mr. Lawrence Maslan who is our Director of Financial Operations.

Senator ABDNOR. Fine.

Mr. Nagle, I know you have a prepared, written, statement. As the same with Mr. Dotson, it isn't necessary for you to go through it in its entirety. I assure you your written statement will be placed in the record as though given in the full form. So you may go ahead any way you care to.

Mr. NAGLE. Well, if it suits you, Senator, we can just proceed with the questions, or I will give a short summary.

SUMMARY OF PREPARED STATEMENT

Senator ABDNOR. Would you like to give us a short summary?

Mr. NAGLE. All right.

The Pension Benefit Guaranty Corporation was established in 1974 under Title IV of the Employee Retirement Income Security Act. Our function is to guarantee certain benefits under privately sponsored defined benefit pension plans.

The costs of our program are borne entirely by premiums assessed against plans which are covered by the program. And we use no general revenue funds.

At the present time, we administer essentially two programs. One is for single-employer defined benefit plans. Under that program, if the sponsor of a single-employer program intends to terminate the plan, they must notify us, and provide us with sufficient information to make a judgment as to whether the plan does have sufficient assets to pay all guaranteed benefits.

If it does not, we end up becoming the trustee of that plan. We take over its assets and assume the obligation to pay the benefits which are vested under that plan and guaranteed pursuant to the statute. And those payments that we thereby make to participants are reflected in one of the items in our budget plan. That would be the $75.9 million projected for fiscal 1983.

We also administer a guarantee program for multiemployer plans. That program was redesigned in 1980 by Congress when it passed the Multiemployer Pension Plan Amendments Act of 1980.

The purpose of that legislation was to encourage multiemployer plans to continue in existence even though they may be experiencing some degree of financial difficulty. If a multiemployer plan should become insolvent and unable to pay the level of guaranteed benefits provided by the statute, we provide financial assistance to that plan to enable it to pay guaranteed benefits.

That financial assistance might end up being either an outright grant or a loan, depending upon the plan's circumstances. That aspect of our responsibility is reflected in the second item in our budget plan which projects $2.8 million for financial assistance to insolvent multiemployer plans for fiscal 1983.

And the third item on our budget plan is for administering these programs. We have projected $27.9 million for fiscal 1983 which would support 492 full-time positions.

Senator ABDNOR. Is that $2.8 million, the projections you have, with the economy in the shape it is in, I suppose, a pretty reliable figure, do you think, for the year?

Mr. NAGLE. The amount that we will have to pay in benefits?

Senator ABDNOR. Yes.

Mr. NAGLE. Well, I think that it is. Due to the conditions in the economy, we may during this period of time incur more long-range obligations than we hope to, but if we are just looking ahead to the amount of payments we will be actually paying out over the next year, I think this figure is likely to be pretty close to the mark.

LEGISLATION TO INCREASE PREMIUMS

Senator ABDNOR. The Corporation's revolving fund is expected to have a $192 million deficit by the end of fiscal year 1983 compared to $131 million at the end of fiscal 1981.

Now, the basic problem we see seems to be that the premiums charged pension funds are inadequate to cover the amount of liability assumed by the fund. Last year you testified that legislation to increase premiums would soon be forthcoming. However, no legislation has yet been submitted.

Why has the Corporation not yet submitted legislation to increase the funds?

Mr. NAGLE. We will be sending a recommendation for a premium increase within the next few weeks, Senator. The staff has prepared a recommendation for a premium increase, and it has recently been approved by our Board of Directors. We are now preparing a more comprehensive submission, explaining all the reasons for it, and providing various analyses for the use of the Congress. We will be forwarding that to Congress within the next few weeks.

Senator ABDNOR. Well, it is kind of an obvious question, but why did it take a couple of years to take care of this? Was there a lot of background that had to be prepared on that?

Mr. NAGLE. Well, we did want to assess the results of our fiscal year 1981 which ended last September. And the experience of that year did indicate that our deficit had increased even more than we had supposed that it would.

There has also been considerable talk about the possibility that Congress might enact some significant revisions to our single-employer program. We thought it appropriate to make some additional assessment of what the impact of that legislation might be if it was passed.

There is legislation that has been introduced in Congress for that purpose.

Senator ABDNOR. Has the picture cleared up now so you think you have a better feel for it?

Mr. NAGLE. I think so; yes. As well as can be done. We are operating in a very uncertain field. The best we can do, we believe, is to make projections based upon our past experience.

Obviously, there are many uncertainties in the economy facing us. And it is very hard to translate those uncertainties into a premium figure.

Senator ABDNOR. You will have something submitted in the very near furture, will you?

Mr. NAGLE. Yes, indeed.

RECOMMENDED AMOUNT OF PREMIUM INCREASE

Senator ABDNOR. Let me ask how much of an increase in premiums do you think is needed to put the revolving fund on a sound financial footing?

Mr. NAGLE. We are recommending a premium increase from the present $2.60 per participant per year to $6.

Senator ABDNOR. Substantial. Would that pretty well wipe out your deficit if you had that kind of a rate?

Mr. NAGLE. We believe that if our experience continues as we have projected from the past that that would be sufficient to handle future claims and eliminate the present deficit over the next 5 years.

Senator ABDNOR. Before you send all that material up in your recommendations, this is going to be directed to Congress, or do you first have to go through OMB?

Mr. NAGLE. Well, we have been through that process.

Senator ABDNOR. Oh, you have been through that?

Mr. NAGLE. Yes; the Cabinet Council on Economic Affairs reviewed the proposal and has approved it as has our Board of Directors.

Senator ABDNOR. Fine.

ADMINISTRATIVE EXPENSES

This committee sets limitations on administrative expenses in a number of programs financed by the trust fund and revenues. However, there is no comparable limitation established for the administrative expenses of the Corporation. Would an increase in the administrative expenses of the PBGC increase the size of the Federal budget deficit?

Mr. NAGLE. In the increasing of our administrative expenses?

Senator ABDNOR. Yes.

Mr. NAGLE. Well, it would, but we have a positive cash flow after reflection of premium income. Therefore, in total, we reduce the size of the budget deficit.

LIMITATION ON ADMINISTRATIVE EXPENSES

Senator ABDNOR. Well, what external limitations are placed on administrative expenses by the Department of Labor or the OMB?

Mr. NAGLE. The Office of Management and Budget does review our budget, and we are not authorized to go beyond the limits that are set in that process.

Senator ABDNOR. Do you see any reason why the Appropriations Committee shouldn't establish a limitation on the administrative expenses for you?

Mr. NAGLE. Do I see any reason why the Appropriations——

Senator ABDNOR. Why we shouldn't.

Mr. NAGLE [continuing]. Shouldn't?

I think there would be some, Senator. If we should be faced with a crisis with respect to, say, a particular plan terminating, and we had to incur additional administrative expenses in order to perform our responsibilities with respect to that plan, as I said, we could not do so without approval from the Office of Management and Budget.

But I believe that if the Appropriations Committee in addition sets limitations, it would mean we have to go through the appropriation process to respond to situations of that sort which really are part of our responsibility to perform.

PREPARED STATEMENT AND SUBMITTED QUESTIONS

Senator ABDNOR. Mr. Nagle, I have a number of other questions, but I think we will submit them to you in writing. It works out very well, and speeds the process up here. So we will be submitting some questions for you. You can answer them at the time you return your corrected hearing transcript.

We appreciate your coming out today and giving very frank opinions on the questions we asked. We will be sending other questions to you later.

Thank you all very much.

Mr. NAGLE. Thank you very much, Senator.

[The statement and the questions, which were not asked at the hearing but were submitted for response for the record, follow:]

STATEMENT OF ROBERT E. NAGLE

Mr. Chairman, members of the Subcommittee, I appreciate this opportunity to appear before you to present the Fiscal Year 1983 Budget Plan for the Pension Benefit Guaranty Corporation (PBGC).

The PBGC was established under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). It is a self-financing, wholly owned Government corporation charged with guaranteeing the basic benefits of most private defined benefit pension plans. Its major source of revenue is the mandatory premiums collected from the approximately 90,000 pension plans covered by its program. The PBGC receives no appropriations from the Congress.

The FY 1983 budget plan is divided into three categories: Disbursements for benefit payments, financial assistance and program administration.

The budget plan includes $75,902,000 to provide for benefit payments to participants and beneficiaries in terminated covered pension plans for FY 1983. This reflects our projection that by the end of FY 1983 PBGC will be paying monthly benefit payments to an estimated 40,700 pay status participants and beneficiaries as compared to approximately 28,900 pay status participants and beneficiaries in FY 1982.

The budget plan also includes $2,800,000 for the purpose of providing financial assistance payments to covered insolvent multiemployer plans. Under this program, the Multiemployer Pension Plan Amendments Act of 1980 requires the PBGC to provide financial assistance to a multiemployer plan if it is or will become insolvent and unable to pay basic benefits when due.

Program Administration resources of $27,991,000 and 492 full-time permanent positions represent increases of $1,162,000 and 40 positions respectively above the FY 1982 budget plan. The $1,162,000 consists of $689,000 to cover built-in increases primarily in personnel compensation and space rental and $473,000 toward the costs of the 40 additional positions requested as a program increase. The 40 additional full-time permanent positions and related funding are needed to expedite implementation of the Multiemployer Pension Plan Amendments Act of 1980, to reduce the backlog of unprocessed termination cases, to make necessary management improvements and to provide essential legal services related to processing termination cases and collecting employer liability. A particular objective is to enhance our ability to discharge properly our many new responsibilities under the Multiemployer Pension Plan Amendments Act. These include providing much needed guidance to plan trustees and contributing employers, and through regulations and individual rulings, mitigating the impact of withdrawal liability provisions where PBGC is authorized to do so in accordance with statutory standards.

Although the FY 1983 budget plan includes an increase of $1,162,000 and 40 positions over FY 1982 to meet the needs to which I have referred, it also reflects our plans to operate more efficiently during FY 1983 through improved operating techniques and improved computer systems applications.

That concludes my opening statement Mr. Chairman. I thank you and the members of this committee for allowing the PBGC the opportunity to appear before you today. I will be happy to respond to any questions you may have.

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

EFFECT OF LARGE CORPORATE BANKRUPTCIES

Several large corporations are reported to be in financial difficulty. Any bankruptcy could substantially increase the liabilities of the Pension Benefit Guaranty Corporation.

Question: What steps is the Corporation taking to protect itself in the event of the bankruptcy of a large business?

Answer: A severely underfunded pension plan terminated by a large bankrupt employer with little or no net worth can result in PBGC's assuming tremendous liabilities. Nonetheless, the employer's liability is limited by law and PBGC can do little more than enforce its claim for 30 percent of net worth in a bankruptcy proceeding.

PBGC has taken a number of steps to assure that it becomes aware of bankruptcies of large companies. PBGC's regulation on reportable events, Reporting and Notification Requirements (29 CFR Part 2617 published in the Federal Register on August 20, 1980), added as a reportable event the occurrence of bankruptcy, insolvency or similar event involving a contributing sponsor of a single-employer plan. Also, PBGC carefully monitors the business press and other publications.

Knowledge of bankruptcies is critical so that PBGC can file its claim for employer liability in the bankruptcy courts by the bar date. Also, PBGC can be influential in focusing the court's attention on the bankrupt employer's pension commitments. For example, PBGC can seek a timely termination of a covered plan during the course of a bankruptcy proceeding to prevent an unreasonable increase in the risk of loss to PBGC.

Question: What is the position of your agency compared to the other creditors of a failed corporation?

Answer: The creditor status of the PBGC depends in large part on the timing of the plan termination. Under Section 4068 of Title IV, a lien arises upon plan termination in the amount due under sections 4062, 4063, and 4064 (employer liability). PBGC takes the position that if the lien is perfected prior to the filing in bankruptcy, and is not disposed of under bankruptcy preference or tax lien rules, PBGC is a secured creditor, and would presumably be paid in full, prior to the satisfaction of any general unsecured claims. If the lien is not perfected, PBGC takes the position that the claim has priority 6 status if the termination occurs prior to bankruptcy. We assert that the claim has priority 1 status if the termination occurs after the filing in bankruptcy.

With respect to unpaid contributions, PBGC has priority 1 status for contributions accruing during the bankruptcy proceeding; within limitations, priority 4 for contributions accrued within 180 days prior to the filing of a bankruptcy proceeding; and general unsecured status for contributions accruing prior thereto (as well as for any accrued amount not allowed priorty 4 status). There is not yet conclusive case law supporting these positions.

Question: Do you have any estimate of the potential financial exposure that might result from a failure of those corporations in the most difficulty?

Answer: The PBGC has identified 17 ongoing firms which are considered to be very high risk. The estimated amount of potential financial exposure is $2.5 billion. This is based upon the assumption that unfunded guaranteed benefits are 75% of unfunded vested liabilities as reported in the Corporation's financial statements.

ADDITIONAL STAFF

The budget requests 40 new positions for Fiscal Year 1983.

Question: How many of these positions will be used to reduce the backlog of unprocessed termination cases?

Answer: Approximately one half of the 40 additional positions are requested for case processing functions. Most of the remaining positions will include duties that directly support the Corporation's case processing activities. These include developing or revising regulations, monitoring and controlling assets of terminated plans and legal support.

Question: How much will the backlog increase if these additional positions are not provided?

Answer: The backlog of cases requiring determinations of benefit liabilities and net worth (employer liability) is expected to increase by 15% to 20% per year without the additional positions.

Question: Why can't the new workload requirements be offset through greater efficiency?

Answer: The Corporation is processing increasingly large and more complex termination cases, thereby diluting the impact of increased experience and efficiency. As the size of the plan increases, collection of appropriate and necessary participant data becomes more difficult. Plan formula, particularly in large collectively bargained plans have at least one and in many cases more than one phase-in of benefits to be calculated. In addition, enhanced and increased support will be devoted to the growing amount of litigation related to the collection of employer liability.

TERMINATION OF PLANS

A company that terminates a pension plan with insufficient assets is required to pay the Corporation for the amount of the insufficiency but not to exceed 30 percent of the company's net worth.

Question: To what extent have some companies been able to escape their financial liabilities by unloading unprofitable pension plans on the Corporation?

Answer: Two types of transactions are in this category. The first type is the strong seller/weak buyer transaction. In this situation a sponsor with more than enough net worth to fund its pension liabilities (30% of net worth exceeds the plan asset insufficiency) sells part of its operation, along with the pension plan, to a buyer with a much lower net worth. Subsequently, the pension plan is terminated and PBGC incurs a net claim, because of the buyer's low net worth.

The second type of transaction involves partial recovery from ongoing sponsors. In this situation an ongoing sponsor terminates a plan and does not have sufficient net worth to pay the entire plan asset insufficiency (i.e., the 30% net worth limitation applies). Consequently, PBGC incurs a net claim.

These types of claims represented about 20% of PBGC's net claims of $345 million at September 30, 1981. However, the potential exists for these abusive claims to become a substantially larger portion of the claims against PBGC in the future.

Question: How many companies have unfunded pension plan liabilities in excess of 30% of their worth?

Answer: Based on 1979 data on 6,000 firms, compiled by Standard and Poor's Compustat Service, a PBGC study found that there were 57 firms whose pension plan liability is more than 30% of the market value of their net worth. This was done by forming a ratio of their unfunded vested liability to the sponsor's market net worth. Firms with a ratio greater than one (1) have an economic incentive to terminate. The PBGC's total exposure from these firms was $8.8 billion before adjusting for vested to guaranteed benefits and PBGC's interest rate assumption. The 26 firms with the greatest incentive to terminate (a ratio of 2.5 or greater) accounted for $5.5 billion of the total exposure. Unfunded vested liability referred to above may be considerably more than the guaranteed unfunded vested liability for which the PBGC may be liable. Therefore, the PBGC exposure is estimated to be considerably less than the $8.8 billion indicated.

Question: Does the Corporation have the authority to prohibit a termination if a company has the financial ability to continue its pension plan?

Answer: In general, the PBGC does not have authority to prohibit termination of a plan if the plan sponsor has the financial ability to continue the plan.

Question: What would have been the increase in the Corporation's assets at the end of Fiscal Year 1981 if it could have recovered insufficiencies up to 50 percent of a company's net worth rather than 30 percent?

Answer: Based on historical experience through FY 81, the ability to recover insufficiencies up to 50% of net worth could have resulted in approximately a $16.0 million increase in the Corporation's assets.

Question: What would be the effect of removing any restriction on recovery?

Answer: We do not have a figure for the amount the PBGC would collect if the net worth cap is eliminated and the PBGC becomes a general creditor in bankruptcy proceedings.

However, two of PBGC's recent largest insufficient terminations illustrate the beneficial effect of this possible change. PBGC's expected losses in these cases total $91 million or about half of the $189 million deficit in the single-employer program. If PBGC had been a general creditor for the full insufficiency in these cases, PBGC would have recovered approximately an additional $28 million. This would have reduced the losses in these cases by 31 percent and the deficit by about 15 percent, from $189 million to about $161 million. In contrast, if PBGC were subordinated to all creditors, PBGC would recover nothing in bankruptcy proceedings.

Question: Is the Corporation planning to recommend legislation to modify the 30 percent net worth limit, and if not, why not?

Answer: Under current law PBGC's claim, as limited by 30% of net worth, has priority status in a bankruptcy proceeding. On July 24, 1981, the Retirement Income Incentives and Administrative Simplification Act of 1981 (S.1541 and H.R. 4330) was introduced. Title VI of this Bill would amend Title IV of ERISA to change the insurable event from plan termination to employer liquidation. It would also eliminate the 30% of net worth cap on employer liability. In addition, PBGC's claim for the full amount of the plan's unfunded guaranteed benefits would have general creditor status in a bankruptcy proceeding. The Administration is supporting this proposal.

COLLECTION OF EMPLOYER DEBTS

The amount of money owed the PBGC by employers has been increasing in recent years. However, these debts are projected to decline in Fiscal Years 1982 and 1983.

Question: How does the Corporation plan to step up its collection activities in order to reduce employer debt?

Answer: The Corporation does not have a problem in regard to cases that have been completely processed and to which a receivable has been agreed. When a covered pension plan terminates, the employer sponsoring the plan is liable to the PBGC for the plan asset insufficiency up to 30% of the employer's net worth (employer liability). Although the debt arises at the time of termination, the amount is not fixed until the processing of the case is completed. The Corporation emphasizes collection activities with respect to employer debt by giving highest priority to the processing of large insufficient cases.

Question: What portion of employer debts at the end of Fiscal Year 1981 has been outstanding for more than one year?

Answer: The amount of employer debt over one year past due at 9/30/81 for which final settlement had been effected was $37.0 thousand. At this time there were receivables estimated at $37.7 million to be collected from employers upon completion of the processing of terminated plans.

Question: What remedies does the Corporation have against a recalcitrant debtor?

Answer: Section 4068 of the Act gives the PBGC the right to establish a lien in favor of the Corporation if the employer has not yet filed in bankruptcy. In addition, in any suit by the PBGC for collection, the agency is entitled to costs. The effect of the recent change in the Economic Tax Recovery Act of 1981, 95 Stat. 172, P.L. 97-34, which permitted the PBGC to raise the interest rate on employer liability from 12% to 20% should encourage early agreement on the amount due.

Question: How many Corporation employees spend full time on collection activities?

Answer: None of the Corporation's employees work full-time on collection activities. Collection of amounts owed the Corporation by sponsors of terminated pension plans is not of a nature that lends itself to being done by any one or more individuals as their full-time responsibility. Determination and subsequent collection of estimated amounts begin with the Corporation's case processing efforts. In many instances, it also requires assistance from the Corporation's legal staff. As such, it involves a substantial number of the Corporation's personnel.

USE OF CONTRACTORS

The administration of benefit payments can be done by the PBGC or by private contractors.

Question: At the end of Fiscal Year 1981, how many beneficiaries received benefits directly from the PBGC and how many received these benefits through private contractors?

Answer: As of September 30, 1981 PBGC was trustee of 660 plans with approximately 72,000 vested plan participants and beneficiaries.

Of these, PBGC was directly administering 472 plans with approximately 51,000 participants. These plans represent approximately 24,000 participants in pay status and 27,000 in deferred vested status.

The remaining 188 trusteed plans were receiving benefit payments from interim paying agents. These plans represent approximately 21,000 participants, of which approximately 10,000 were in pay status and 11,000 were in deferred vested status.

As described below, these interim paying agents are not contractors in the true sense of the word. Rather, they provide a temporary service while the PBGC finalizes the processing of the plan.

Question: Under what circumstances are private contractors used?

Answer: In the area of benefit payments, as a matter of operating policy, PBGC has chosen to directly administer and pay the benefits of plans for which it is trustee. PBGC selected this approach to take advantage of the economies of scale. However, during the period between the date of plan termination and the date PBGC takes over benefit payment responsibility, an interim paying agent, normally the prior trustee, makes benefit payments on behalf of the PBGC.

Question: How are they selected?

Answer: Normally the paying agent being used prior to PBGC trusteeship is selected. This is done to maintain an uninterrupted flow of monthly benefit payments to pay status participants in plans for which PBGC has not taken over benefit payment responsibility.

Question: Is there a cost advantage or disadvantage to using private contractors for benefit administration?

Answer: It is the Corporation's present belief that centralized benefit administration can be handled more effectively by the PBGC rather than private contractors due to such activities as processing participants' formal appeal rights, responding to the high rate of participant inquiries, developing a centralized data base for actuarial valuation and the exercise of control over cash disbursements. However, during the period from time of plan termination to PBGC trusteeship some degree of outside assistance (interim paying agent) is virtually inevitable in order to maintain continuity of payments to pay status participants.

Question: How much will the use of private contractors decline if the additional PBGC staffing is approved for Fiscal Year 1983?

Answer: To the extent that the additional staffing can accelerate the processing of the backlog of termination cases and can expedite the takeover of benefit payment responsibilities, there will be a corresponding decline in the use of interim paying agents. In addition, the Corporation is exploring ways to accelerate the movement of trusteed plans into PBGC benefit administration even prior to the completion of final case processing. This will further reduce the use and related costs of interim paying agents. However, it should be noted that the use of interim paying agents will be required to a certain extent at all times due to the nature of our termination processing and trusteeship activities.

CONGLOMERATE SPIN-OFFS

If a conglomerate corporation divests itself of a subsidiary with large unfunded pension plan liabilities, those liabilities can be unloaded on the Pension Benefit Guaranty Corporation while the equity of the parent is protected. In some cases, the subsidiary may be sold to the shareholders of the parent corporation, thus raising a question as to whether there has been a real divestment.

Question: To what extent do these types of divestments represent a serious problem for the PBGC?

Answer: PBGC considers transfers of large pension liabilities one of the most serious problems it faces, and one of the largest potential drains on the system. The transfers not only insulate the "deep pocket" of the seller, but also present an attractive opportunity for dumping liabilities on the PBGC where the ratio of retirees to active participants is high, and the purchaser can take advantage of the net worth limit in section 4062.

Question: What authority does the PBGC have to demand a reimbursement from the parent corporation in the case of paper divestments?

Answer: The PBGC can attempt to collect employer liability from the parent where it can prove that the transaction was effected with the intent to evade liability under the Act. The legislative history of section 4212 of the Multiemployer Act cites with favor the PBGC approach of seeking to assert liability against a seller where a transfer is for the purpose of avoiding or evading liability under the Act, although the courts have not ruled on this issue. Where the parent maintains financial or other ties to the subsidiary, casting additional doubt on the bona fides of the transfer, or where the parent knew or should have known that the purchaser would be unable to maintain the plan, the PBGC could seek to assert liability against the parent/seller.

Question: Is the PBGC planning to recommend any legislation to strengthen its ability to obtain recoveries from conglomerate corporations?

Answer: When a covered pension plan terminates under current law, PBGC assesses liability against the contributing sponsor and all trades or businesses that belong to the same control group as of the date of plan termination. ERISA defines control for this purpose as 80 percent ownership interest. S.1541 and H.R.4330 would change the definition of control to 50 percent and would extend liability to all trades or businesses that are or were members of the contributing sponsor's control group during the five years preceding plan termination. The Administration is supporting this proposal.

The Bill also includes provisions for protecting PBGC when pensionliabilities are transferred from a strong employer to a weak employer. Whenever the contributing sponsor changes, the Bill would impose contingent liability on the prior contributing sponsor in the event the new sponsor experiences an insurable event. The amount of this liability is the lesser of (1) the unfunded guaranteed benefits in the plan on the insurable event date less any amounts that PBGC collects from employers liable on that date and (2) the unfunded accrued benefits in the plan at the end of the plan year in which the change occurred. Liability under this section would continue for 15 years or, if shorter, the number of years necessary to finish funding the unfunded accrued benefits in the plan as of the date of change.

The Bill provides an automatic waiver from this contingent liability when the net tangible assets of the new sponsor and its control group are greater than the net tangible assets of the old sponsor and its control group, or are at least enough to cover the unfunded benefits being transferred. In addition, PBGC has authority to waive this contingent liability if it determines that the interests of plan participants, beneficiaries, and the Corporation are adequately protected without such liability.

The Administration supports the concept of protecting the insurance system from losses resulting from transfers of pension liabilities from strong to weak employers.

FINANCIAL ASSISTANCE TO MULTIEMPLOYER PLANS

The law permits the PBGC to provide financial assistance to a multiemployer plan that is or is about to become insolvent.

Question: Have any applications for financial assistance been received, and if so, how much financial assistance has been provided?

Answer: Yes, the Corporation has received one (1) application for financial assistance. The amount provided was $311,000.

Question: Does the PBGC have any forecast of its potential liability for financial assistance over the next ten years?

Answer: PBGC has forecast its potential liability for financial assistance through fiscal year 1987:

Year	Financial Assistance (In millions)
FY 1982	$2.7
FY 1983	2.8
FY 1984	2.9
FY 1985	3.0
FY 1986	3.1
FY 1987	3.1

Question: Are the premiums under the multiemployer program sufficient to meet the amount of financial assistance likely to be provided?

Answer: The annual premium for the multiemployer program is currently $1.40 per participant and will increase in scheduled steps to $2.60 per participant for 1989 plan years. The multiemployer program covers about 8 million participants. PBGC expects that multiemployer premium income will be sufficient to meet estimated financial assistance payments.

SUPPLEMENTAL BENEFITS

The Multiemployer Pension Plan Amendments Act of 1980 requires the PBGC to establish two new supplemental programs for multiemployer plans in Fiscal Year 1982. One would guarantee benefits that exceeded the statutory limitations on basic benefits. The other would reimburse multiemployer plans for deficiencies caused by the bankruptcy of a participating firm.

Question: What is the current status of these new programs?

Answer: On April 30, 1982, the Chairman of PBGC's Board of Directors submitted proposed legislation to the Speaker of the House and the President of the Senate that would amend section 4222 of ERISA to delete the May 1, 1982, deadline for establishing a mandatory reimbursement program. The amendment would make establishment of a reimbursement program discretionary with the PBGC.

On February 26, 1982, PBGC submitted to the Office of Management and Budget a proposed regulation establishing a supplemental guarantee program in accordance with Executive Order 12291. The proposed regulation should be signed and published in the Federal Register shortly.

Question: How does the PBGC determine the premiums to be charged for these new guarantees?

Answer: The proposed annual premium for the supplemental guarantee program is the product of the number of plan participants, the number of units of supplemental coverage in effect for the plan for the year, and the supplemental premium rate of $0.30. To determine the supplemental premium rate, the premium rate ($2.60) for basic benefits was converted to a premium per $1.00 of basic benefits guaranteed by dividing the basic premium rate ($2.60) by the highest average guaranteed monthly accural rate ($8.95) for multiemployer plan participants.

A unit of supplemental coverage is $1 per month times a participant's years of service. Thus, for a participant with 20 years of service, a unit is $20 a month. To provide that participant supplemental coverage of $60 per month, a plan would purchase 3 units ($60 ÷ $20) at a premium of $0.90 (3 x $0.30).

Question: Does the PBGC double check its estimates with independent actuaries?

Answer: Yes. PBGC contracted with an independent actuarial consulting firm to review and comment on the proposed supplemental guarantee program. The firm concluded its report with the following statement:

> In summary, relating the supplemental premium to the basic premium the conservative way in which this was done by incorporating a time lag in the premium/benefit ratio, the underwriting control of the PBGC will apply, and the reasonable claim frequency which emerged from our test on stationary populations leaves us without criticism of the premium structure and with confidence in its reasonableness.

EMPLOYMENT STANDARDS ADMINISTRATION

STATEMENT OF ROBERT B. COLLYER, DEPUTY UNDER SECRETARY FOR EMPLOYMENT STANDARDS

ACCOMPANIED BY:

- LAWRENCE W. ROGERS, DIRECTOR, OFFICE OF PROGRAM DEVELOPMENT AND ACCOUNTABILITY
- KAREN S. SEVERN, DIRECTOR, DIVISION OF BUDGET AND FINANCE FOR EMPLOYMENT STANDARDS
- MARY ANN WYRSCH, DIRECTOR, OFFICE OF BUDGET

SUBCOMMITTEE PROCEDURE

Senator ABDNOR. Next, we will hear from Robert Collyer, the Deputy Under Secretary for Employment Standards.

Mr. Secretary, we welcome you to the committee, too, this morning. We are moving right along here.

I see you have some people with you, so if you will introduce them, we will let you proceed as you wish.

As you heard me say earlier, the entire statement will be placed in the record. You can proceed any way you wish.

INTRODUCTION OF ASSOCIATES

Mr. COLLYER. Thank you and good morning, Mr. Chairman.

I would like to introduce Karen Severn, on my left, Director of our Division of Budget and Finance.

Larry Rogers, to my immediate right, is Director of the Office of Program Development and Accountability.

And Mary Ann Wyrsch, is Director of the Office of Budget for the entire Department.

Mr. Chairman, I will not read the statement. I will visit with you for a few minutes about the Employment Standards Administration and what we are doing and what we plan to do in the future.

OVERVIEW OF FISCAL YEAR 1983 REQUEST

Our overall request of $1.93 billion is up from $1.878 billion in 1982, an increase of 3.2 percent. S. & E., salaries and expenses, for 1982 was $182 million, and we are asking for almost $191 million, an increase of 4.8 percent.

I have to point out that two-thirds of that increase in salary and expense is mandatory current services. It is not discretionary. It is pay increases and that sort of thing. We have to have the funds for current operations.

The other third or about $3 million is virtually all for the continuation of our 5-year automatic data processing plan. We are trying to get off the manual systems, get the numerous details of the Employment

Standards Administration, onto the computer so we can have much, much better and more accurate records, and we will need fewer people to handle the clerical process.

Even though our request is a barebones request and we have cut many things to preserve this 5-year continuum, if we lose 1 year within the 5, we could lose more than 1 year's funding because we could lose people, lose the contractors, and the momentum we have built up in this 5-year plan.

I am very impressed with what we see in the future in terms of capabilities through our computer systems.

Last year, I established an internal control unit because one of my highest priorities throughout ESA is the control of fraud, waste, and abuse. And this internal control unit is composed of people who have varied backgrounds, Ph. D., CPA, people of this sort, who have access to all of ESA's records. They report directly to me on matters of fraud.

They are looking for, not just evidence of fraud, but gaps in our control systems that might allow for fraud at some future date and recommending to us changes that might be made in our programs to prevent waste, abuse, and certainly fraud.

WORKERS' COMPENSATION PROGRAMS

In the Office of Workers' Compensation Programs, we have three separate workers' compensation programs that we handle. The black lung program was in desperate need of change statutorily. We accomplished that last year, just 4 months ago. We passed our black lung bill.

The black lung program was in debt to the Federal Treasury to the tune of $1.5 billion. We have doubled the tax on coal. This was agreed in the bill. All the interested parties contributed to the compromise.

We tightened eligibility so only those people with black lung who are disabled can get into the program. Such was not the case prior to the time we passed that legislation.

As a result, the debt, the advances we were having to take from the Federal Treasury, are dropping. The number of claims is dropping. The program is coming down to something more like a reasonable workers' compensation program, a major advance.

We also administer the Longshoremen's and Harborworkers' Act. It does not rely on Federal money. The benefits are paid by the employers through either self-insurance or insurance. That act is badly in need of revision.

Senator Nickles has a bill in his committee at this time, S.1182, and we support major changes and many of the recommendations that they have in that bill.

We have other things we have suggested to the committee. And we are going to urge the passage of longshore reform this year. Many things need to be done.

The Federal Employees Compensation Act is the act that covers the 3 million Federal civilian employees. We pay the benefits out of Treasury dollars and are reimbursed from the agencies for whom the people work.

We have a bill that was sent up to the Hill last week. That act also needs major revisions and has needed them since 1974, which was the last time it was amended.

OFFICE OF FEDERAL CONTRACT COMPLIANCE

Next is the Office of Federal Contract Compliance Programs. We are suggesting again major changes in the regulations under Executive Order 11246. We are trying to turn around that program in terms of direction. We are trying to reduce the onerous paperwork burdens on employers and help that program create job opportunities for minorities and women and improve their chances of getting better jobs.

WAGE AND HOUR DIVISION

The Wage and Hour Division is our third major component. We are proposing major regulatory changes in both the Davis-Bacon Act and Service Contract Act. We will also be proposing legislation that will be coming to the Hill shortly in the Fair Labor Standards Act and Farm Labor Contractor Registration Act. The latter act is sorely in need of change; it is completely out of control as far as I am concerned.

That bill should be up here within 3 weeks to 1 month. And again, we have consulted with the interest groups. We think we have a compromise. We will have hearings on it, and I think it will be an act the Congress can approve.

So we think we are doing a better job of running our programs. We are doing it with fewer resources, and at the same time, we are making an extra effort that it takes to change the programs, change the statutes and change the regulations.

That is it, Mr. Chairman. I would be glad to respond to any questions you might have.

Senator ABDNOR. Thank you, Mr. Secretary. It sounds like you have taken a lot of initiatives here. And I am sure you are keeping the committee busy with all of that. That is fine. We commend the Department for that.

AUTOMATIC DATA PROCESSING INCREASE

The 1983 budget contains an increase of nearly $4 million for various automatic data processing which you mentioned.

Mr. COLLYER. Yes; that is correct.

Senator ABDNOR. What specific savings do you project as a result of those increased expenditures? I guess you have touched on that, too.

Mr. COLLYER. Regarding the specific dollar savings, sir, in 1983, I think there are some savings that will be gained through the elimination of overpayments. When we make payments under benefit programs using the manual budget system, there is the potential for duplication.

I know the Inspector General and the General Accounting Office has gone through some of the black lung files and found there have been overpayments of several million dollars that we are trying to recapture right now. This was mainly because the program was run at that time through five separate computer contracts with manual, literally manual, carrying of files in between these contract clients.

It was just an emergency system put together to accommodate the changes in 1977. And some claims slipped through the system. And they were overpaid. And we are trying to clean that up.

BLACK LUNG

The integrated ADP system will prevent this sort of thing.

Certainly, in the Federal Employees Compensation Act, we plan by 1984 to have not just a case tracking management information system, but actually a case adjudication system on the computer. It will dictate to those who make adjudicatory decisions what the next step is so that nothing is left out in that process.

The employer gets a fair shake, and the Government gets a fair shake because the full extent of the statute is tested against that claim through the ADP process.

Mr. Rogers tells me that we will spend more in 1983 developing these programs, and later on, the cost will decline. But we see some major savings although we can't identify them dollar by dollar; but we know we will need fewer people to perform clerical tasks as the computer does the work rather than people trying to push a pencil.

Senator ABDNOR. In other words, in the first year, the real efficiency of the expenditure won't show up as much as down the road; is that it?

Mr. COLLYER. Down the road, we will see major savings. Right now, it is probably a cost item, although we have some of the programs in place. We are able to put our black lung claims on one tape. We are trying to purify that tape to remove the redundancy, such as duplicated claims.

So we are making use of the system as we go along. But we are continuing to develop it as well.

BLACK LUNG ADMINISTRATION

Senator ABDNOR. You are talking about the black lung program here. There are two separate programs for providing benefits to workers with black lung disease. One is administered by the Social Security Administration; the other by the Department of Labor.

Mr. COLLYER. Yes.

Senator ABDNOR. How much administrative overhead could be saved if the two programs were consolidated? Have you given any thought to that?

Mr. COLLYER. In terms of dollars, I am told that administrative expenses are $7 million for SSA, and $21.2 million for DOL. It is possible that consolidation may achieve some administrative savings.

Senator ABDNOR. By bringing the two together?

Mr. COLLYER. Yes.

I would suggest that if we did bring the two together, let me point out why. The Black Lung Law passed in 1969. The Labor Department wasn't geared up to handle claims that would be generated through this law. Federal dollars were being paid out in terms of benefits. So we used the Social Security Administration to make payments.

The law was changed in 1972 to transfer the claims' adjudication process and payment as of the end of 1973 to the Labor Department. At that point, we geared up and paid the claims.

At the same time, responsible operators, the coal operators, were asked to make the claims payments on cases that we found and adjudicated as being proper for operator liability. A trust fund then was set up to pay claims where a responsible operator could not be found or to pay interim benefits when there was dispute as to whether or not the responsible operator should pay the claim.

That is the system we have in place today. The Social Security Administration is not geared up today to make adjudication. We are the input side of it for making decisions on claims. They are simply paying the old claims, the benefits that come from the old claims.

So it would be, I suspect, easier to transfer the tapes on the old claims for payment to us rather than transfer to them this new process of handling the workers' compensation program which they are not really geared to do.

Senator ABDNOR. Then, you would say that consolidating the two programs would certainly eliminate the duplication in processing of the claims?

Mr. COLLYER. There is no duplication of claims processing, but in terms of saving money I guess I would start with the number of Xerox machines and work up or down from that, sir.

FEDERAL EMPLOYEES' COMPENSATION ACT

Senator ABDNOR. Very good.

Although Federal employment has been declining, the number of injuries reported and the claims received under the Federal Employees Compensation Act is still projected to increase in fiscal year 1983 by your figures. Also over the last decade, the number of injuries reported and the claims received have increased by over 60 percent.

Why are you projecting an increase in Federal employee claims in injuries when supposedly employment is on the decline?

Mr. COLLYER. That's correct, Mr. Chairman. Employment for the past 10 years has been hovering right around or just below 3 million civilian Federal employees. I think it began with the Pay Comparability Act that was passed in the early seventies, I guess it was. I think it was the early seventies anyway.

And then, in 1974, the Federal Employees Compensation Act itself was amended. And at that time, they instituted a provision called continuation of pay because, lacking computer ADP systems, the Department was unable to process the claims fast enough to get the checks out to people.

So they said, "For 45 days, the Agency will continue to pay full salary to someone who is injured."

This became in my view an extension of sick pay, extension of annual leave, just another thing to use to reserve annual leave and sick pay, where there is very little control over these people while they were receiving this continuation of pay.

Also let me point out that the benefits—and this is the reason I mentioned the Pay Comparability Act benefits under the program, and the reason I suggest that we change it—are extremely high. For a person living here in the District of Columbia who is married, who is working at say the GS-15 level, step 10, we calculated a hypothetical payment.

It turns out if we subtracted from that person's paycheck just the mandatory deductions, such as the District of Columbia withholding, Federal withholding, and the 7-percent pension, the benefit check exceeds the paycheck by $163 a week. This is a terrible disincentive to work. There is no reason to go back to work because you take a cut in pay as it were.

These are the kinds of things that cause people to gravitate to the program and stay there.

Senator ABDNOR. Do you have pending legislation covering that?

Mr. COLLYER. Absolutely.

Senator ABDNOR. Good.

OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

The 1983 budget states one of the principal objectives of the Department is to eliminate needless confrontations between OFCCP and Office of the Federal Contract Compliance Program that is in the contract. How does the Department plan to eliminate these needless confrontations?

Mr. COLLYER. Well, a lot of it, Mr. Chairman, is just going to be retraining of our people. It is an attitudinal change. This is really as opposed to the EEOC. We are an employment-oriented program, really. We do have enforcement capabilities. I think we need those enforcement capabilities and responsibilities.

But at the same time, the spirit of Executive Order 11246, signed by President Johnson in 1965, was to conciliate, to urge, to do whatever it took, to get Federal contractors to bring onboard their proportionate share of both women and minorities, to provide jobs for them, meaningful jobs with good pay.

In the past, I am afraid the program has been administered in such a way that we look strictly at enforcement. We spent a lot of time having the contractors pore through page after page after page of paperwork they had to prepare on their own to try to find where they might have made a mistake. That is simply not the spirit of the program.

The spirit of the program is to do everything we can to encourage employers to take the necessary steps to get these people on- board—linkage agreements with community-based employment training programs; in-house training programs—anything that will bring these people into the work force.

So our regulatory package that we expect to have out this summer will give our compliance officers, our people in the program, new directions. And it will relieve employers from the tremendous burdens they are under at the present.

Senator ABDNOR. Well, hopefully, there are some accomplishments you can bring about.

Mr. COLLYER. We are going to really try.

Senator ABDNOR. I realize that it is not easy to do overnight, but we wish you success. You do have a great responsibility.

PREPARED STATEMENT AND SUBMITTED QUESTIONS

We have other questions, but if you don't mind, Mr. Secretary, we will submit them to you in writing. At the time of correction of the record on your part, you can give us the answers.

Mr. COLLYER. We would be very happy to do so, Mr. Chairman, Thank you very much.

Senator ABDNOR. Thank you.

[The statement and the questions, which were not asked at the hearing but were submitted for response for the record, follow:]

STATEMENT OF ROBERT B. COLLYER

Mr. Chairman and Members of the Subcommittee, I am glad to appear before you today representing the Employment Standards Administration of the Department of Labor. Accompanying me are: Lawrence W. Rogers, Director of the Office of Program Development and Accountability; Karen Severn, Division of Budget and Finance in the Office of Program Development and Accountability; and, Mary Ann Wyrsch, Director, Office of Budget of the Department of Labor.

The Employment Standards Administration's FY 1983 budget request for Salaries and Expenses is for $190,835,000 and 4,238 positions. This represents an increase of $8,814,000 over FY 1982 funding levels. This amount is composed of both mandatory increases because of higher operating costs, and program increases primarily for ADP improvements.

The Special Benefits Fund request for FY 1983 is for $1,101,600,000 of which $339,600,000 is a direct appropriation with $762,000,000 being reimbursed from other agencies. The FY 1983 Black Lung Disability Trust Fund is for $674,300,000.

Before I discuss the details of the FY 1983 budget request, I shall describe the overall framework within which the budget request was prepared.In FY 1983, the Employment Standards Administration will continue the priorities of its activities which were established in FY 1982. All programs will remain essentially constant in their staffing levels. Priority was given to the Federal Employees Compensation Act Program and the Longshoremen's and Harbor Workers' Act in FY 1982. The annualization of the Special Targeted Enforcement Program allows the Wage and Hour Division to maintain virtually the same staffing levels in FY 1983.

Emphasis will be placed in implementing legislative changes that occurred in Black Lung and FECA in FY 1982, and the changes and improvements in regulations for OFCCP and Wage and Hour.

ADP remains a very high priority in FY 1983. In these times of tightened budgets and limited resources, the development and implementation of well-conceived automated systems becomes mandatory. ESA to date has made extensive use of information technology as an effective tool for increasing the productivity and efficiency of available resources. Despite limitations in available funding, ESA has chosen to maintain and even improve the quality of the ESA programs through the more effective use of ADP. We plan a significant increase in our investment in ADP in FY 1983. Furthermore, we are planning a fully integrated approach to ADP applications throughout ESA to keep development and operating costs as low as possible, while maintaining a uniformly high degree of management capability.

Wage and Hour Standards

A total of $69,436,000 and 1,471 positions is requested for the administration and enforcement of a variety of Federal labor laws affecting wages and working conditions which cover virtually all private employment.

In the Wage and Hour program, pursuant to the Administration's regulatory relief program, we have proposed revisions to the Davis-Bacon Act and Service Contract Act Regulations. These proposals were published in the Federal Register on August 24, 1981; comments received are presently undergoing staff analysis. We expect to publish revised regulations in final form late Spring.

In July 1981, the Administration announced an immigration and refugee policy reform package. Included in this package was an initiative to provide additional resources to strengthen labor standards enforcement to reduce the economic incentive for employers who exploit illegal aliens. With these resources, a Special Targeted Enforcement Program (STEP) was initiated by ESA in January of 1982. Under this program, local Wage and Hour staff work with Immigration and Naturalization Service (INS) officials to identify specific geographic areas and industries where illegal aliens are believed to be employed under substandard working conditions. We plan to make 7,000 Fair Labor Standards investigations under this program in FY 1982 and 13,000 during FY 1983.

We are continuing development of the new Wage and Hour Management Information System (WHMIS) as part of our program to provide more efficient use of resources. WHMIS is an automated case tracking and statistical information system which will provide all levels of management with a greater range of available information with which to manage their programs. An additional $409,000 is being requested in FY 1983 for continuation of WHMIS.

Since there have been reductions in Wage and Hour staff over the past year, maintenance of an acceptable ratio of supervisors to compliance officers may require some consolidation of our area offices. We are examining this issue and will develop a plan for the number of locations of Wage and Hour area offices. Any necessary changes will probably be made at the end of FY 1982.

Office of Federal Contract Compliance Programs

A total of $42,614,000 and 979 positions is requested for activities which enforce statutes and Executive Orders prohibiting employmentdiscrimination by Federal contractors on the basis of race, sex, religion, national origin, handicapped or veterans status.

Although there was a decrease in funding for the Office of Federal Contract Compliance Programs in FY 1982, we are maintaining the FY 1982 staff level without any further reductions in FY 1983; we expect that program activity will actually increase from 9,225 compliance actions in FY 1982 to 10,245 in FY 1983.

This Administration is dedicated to assuring that equal employment opportunity and affirmative action obligations are met by Government contractors. However, rather than pursue non-productive confrontations, we are building our program on cooperation with contractors. It is our position that more jobs will be created for minorities, women, handicapped persons, and veterans in a friendly atmosphere than in a hostile one, one which produced paperwork, aggravation, and contempt for the Federal Government's efforts to eliminate discrimination in employment. We published an advanced notice of proposed rulemaking in July 1981, and a notice of proposed rulemaking in August 1981. We are reviewing the comments on these notices, and will issue a new proposal this summer.

As you know, the compliance activities of the contracting agencies were consolidated into the Department of Labor in October 1978. After reassessing the initial decisions made on area and field office locations and taking into account the recent reduction-in-force, it has become evident that OFCCP's field organization needs restructuring. Some offices may be closed; others which are in close proximity to each other, will be merged; and some of the remaining offices will be structured. We will make sure that all offices are as easily accessible as possible to every one using our services.

To make the program more effective, increased outreach efforts to improve and expand communication with industry and constituency groups through the formation of Liaison Groups have been undertaken. These groups,which are encouraged but neither formed nor controlled by OFCCP, can be effectively used to discuss issues of mutual concern, foster a spirit of cooperation, and facilitate the development of training programs.

Workers' Compensation Programs

In the Workers' Compensation Programs, we are committed to ensure that the interests of both eligible claimants and the Federal government are protected throughout all stages of processing, adjudicating, and paying claims. Improvement in claimant service and in quality control are also top priorities.

Federal Employees' Compensation Act

A total of $38,431,000 and 903 positions is requested to manage the Federal Employees' Compensation Act Program for FY 1983.

We have taken a number of administrative steps to improve the delivery system under FECA and to eliminate waste and fraud in the program. However, administrative changes alone cannot fully restore the credibility of the FECA program nor eliminate its inherent flaws and inequities. Legislative changes are needed to accomplish these objectives. Today, the Federal compensation system has a benefit structure which causes some people to file claims for nondisabling injuries and to stay off the job for more time than necessary.

Our proposed amendments to the FECA, if adopted, will eliminate certain inequities in the law and effect savings by providing workers with gainful employment instead of encouraging overreliance on the benefit system for compensation.

The continued development and eventual integration of ADP systems designed to expedite claims processing and adjudication as well as to provide more effective management control is essential if ESA is to achieve its FECA objectives. Our request includes an additional $2,849,000 to fund the design and development of a replacement FEC system, the Level II Federal Employees Compensation System, which expands significantly the scope of ADP support for both operational processing and management control. The Level II system is an essential element of an effective program to ensure continued program improvements in operations, administrative control, and program accountability.

Longshoremen's and Harbor Workers' Compensation Program

In FY 1983, we are requesting 157 positions and $6,567,000 for the administration of the Longshore and Harbor Workers' program. This program provides compensation to workers for wages lost through disability, death benefits to survivors of deceased workers, and medical treatment and rehabilitation services.

Our budget request for this program includes an additional $574,000 to implement an automated claims tracking system in all ten district offices. Implementation of this system, with claims tracking and management information capabilities, will increase the overall efficiency of the existing system and eventually become part of the ESA wide consolidated system for the entire workers' compensation program.

Black Lung Program

The last of three workers' compensation programs administered by ESA is the black lung benefits program. For operating expenses in FY 1983, ESA is requesting 481 positions and $20,216,000. The recent enactment of the Black Lung Benefits and Revenue Amendments of 1981 is expected to place the program on a sound financial basis and should eliminate, by the end of FY 1984, the need for further treasury advances to the Trust fund.

Program emphasis in Black Lung will be on the accurate determination of eligibility, the delivery of benefits and services to beneficiaries and the continued support for the processing of hearings and appeals resulting from the 1977 Amendments. Claims filings should decline slightly as individuals with marginal claims elect not to file under the stricter eligibility standards of the 1981 Amendments. In FY 1983, the program will have its first full-year operational use of an integrated claims tracking and automated payment system scheduled to become operational in August 1982. It is expected that operations under this system will result in significant savings in both benefit disbursement and operational costs. In addition,audit and accounting capabilities will be improved and debt collection results will be stressed.

Executive Direction and Support Services

A total of $13,571,000 and 247 positions is being requested for Executive Direction and Support Services. The major thrust of this activity is to maximize the effective use of resources available to the Agency for carrying out its mission. ESA is committed to increased productivity and quality of services in each of its program activities. Cost savings initiatives introduced in FY 1981 and FY 1982 will continue and new ones will be developed; particular attention will be given to travel, space consolidations and organizational changes. We will intensify our efforts to improve procedures for the identification, tracking, collection and prevention of debts due the Government.

Major emphasis will be given to the application of ADP systems to program needs. Our overall strategy will continue to be in the development of shared systems along program lines wherever feasible. This strategy will result in the integration of all ESA programs into a common system that will provide managers and staff with the capability to track enforcement cases and benefit claims, provide information on case loads, and provide daily operational support to all programs. Additional funding of $123,000 is requested for the design and development of an integrated ADP management system which will allow us to increase management control of resources through a more uniform decision making process.

Increased attention will be given to the elimination of waste, fraud and mismanagement. The Employment Standards Administration's Internal Control Unit, with investigative and analytical automated data processing capability, will continue to examine all programs to detect and correct areas where waste, fraud, and abuse occur. Special emphasis will be placed on developing and monitoring computerized programs which detect fraud or abuse in employee benefit payment programs.

Conclusion

Mr. Chairman, this concludes my formal statement. The budget request for FY 1983 has been prepared after careful and full consideration of program needs as well as the need to reduce costs wherever possible. It reflects our best **judgment** concerning those needs. My staff and I will be pleased to answer any questions which you or members of the Subcommittee might have.

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

REPORT OF MINIMUM WAGE STUDY COMMISSION

In May of 1981, the Minimum Wage Study Commission completed a three-year study of the Minimum Wage Act. The Commission made a number of recommendations to strengthen enforcement of the Act to reduce employer noncompliance.

Question: What action has the Department taken on these recommendations?

Answer: The Commission's recommendations are under study by the Department. Their recommendation that the cost to employers of not complying with the FLSA must be increased to reduce the economic benefit of noncompliance is being seriously considered by the Department and methods for its implementation are being discussed.

Question: Did the report of the Minimum Wage Study Commission provide any hard answers on the impact of sub-minimum wages for youth workers or for other targeted groups?

Answer: The Minimum Wage Study Commission recommended against establishing a youth minimum wage citing a number of reasons including the following:

- available estimates suggest a youth differential has limited potential for reducing the unemployment rate;
- there is no evidence that areas with the highest youth unemployment rates would be the most likely beneficiaries;
- adult employment would be reduced;
- it would be discriminatory.

The Commission's studies which were contracted out do not provide any conclusive findings on the likely effects of a youth differential. Several of the papers prepared for the MWSC contained estimates. One estimate suggests that a 25 percent differential would increase teenage employment by 2.5 percent, and this assumes sufficient numbers of teenagers would work for the lower wages.

Question: What would be the projected impact of a youth sub-minimum wage for adult workers?

Answer: Again the studies are inconclusive. A youth differential would encourage some employers to substitute youth for other operating costs such as equipment and higher paid adult workers. The extent of such substitution is difficult to estimate.

Question: Would there be any significant displacement of adult workers?

Answer: The kind of jobs that employers establish for youth at special minimum wages would probably be low-skilled and require no experience. Consequently, to the extent that displacement did occur, it would probably be among low-wage unskilled adult workers.

Many economists have contended that the minimum wage law deprives youthful workers of potential job opportunities.

Question: Do you concur in these criticisms of the minimum wage law?

Answer: Economic theory predicts that an imposed minimum wage will result in decreased employment opportunities. The theory assumes the minimum wage is set above prevailing market wages which forces employers to pay workers more than they can produce. As a result, fewer workers are hired at that wage. To the extent that teenagers are less skilled and less productive than adults, their employment opportunities may be disproportionately affected by the minimum wage Although research studies in this area have reached differing conclusions we believe that a lower minimum wage for youth would increase their employment opportunities.

Question: Is the Department planning to submit any proposals for modifying the Minimum Wage Law?

Answer: The Department has been carefully studying the need for amendments to strengthen the FLSA. We do not have any final specific proposals for submission to the Congress.

SPECIAL TARGETED ENFORCEMENT PROGRAM

Question: Why did the Department see fit to launch a major new program that was not included in its 1982 Budget submission and without informing this Committee in advance?

Answer: On July 30, 1981 the Administration announced a comprehensive policy on immigration and refugees. Included in this policy was a proposal for additional resources which would be used to strengthen labor enforcement in order to remove the economic incentive for employers to exploit illegal alien workers. A budget amendment requesting $6,000,000 to fund 197 compliance officer positions for this program was submitted as part of the Administration's FY 1982 ammended budget in September 1981.

The Special Targeted Enforcement Program (STEP) was implemented in January 1982. Communications between Wage & Hour and the Immigration and Naturalization Service have been established in order to identify specific geographic areas and industries where illegal aliens are believed to be employed under substandard working conditions. We can plan to make 7,000 investigations during the remainder of FY 1982 and 13,000 during FY 1983.

The general STEP investigation is conducted in the same manner as a typical Fair Labor Standards Act (FLSA) investigation. Wage and Hour compliance officers review time cards and payroll records and interview employees to determine if the employees are being paid legal wages. For this reason the Department believes that it has not initiated a new program but has merely redirected resources within the Wage Hour program to support Administration's policy on immigration and refugees.

Question: How are employers to be selected for investigation under this program?

Answer: The targeting of specific industries and localities for directed STEP investigations is done by local Department of Labor officials who coordinate the selection process with local INS officials. In some cases, INS furnishes names of specific firms they have contacted in the past; in other cases, general information is provided on localities and industries with high concentrations of illegal alien employment.

Question: What have been the results?

Answer: It is too early to assess the impact of STEP. Before the end of FY 1982, the program will be evaluated and any necessary changes will be made prior to the start of the new year.

Question: What kinds of investigations are being discontinued in order to make way for this new program?

Answer: The STEP program is purely an effort to target Fair Labor Standards Act (FLSA) investigations in low wage employment areas where illegal alien employment is particularly high. The only difference between STEP investigations and other FLSA noncomplaint investigations is that the criteria used in selecting firms for investigation includes the likelihood that illegal aliens are employed at such firms. In the absence of the STEP program, these resources would be used to schedule noncomplaint FLSA investigations in low wage areas without any special efforts made to select firms where it is believed illegal aliens are employed. Thus, the STEP program does not, in any sense, represent a diversion of resources from other specific FLSA program responsibilities.

The 1983 budget requests an increase of $1.9 million over the 1982 level to pay for the Special Targeted Enforcement Program (STEP).

Question: Since the increased STEP investigations are offset by reduced investigations in other areas, why are additional funds needed?

Answer: The cost for STEP is not offset by reductions elsewhere. The $1.9 million represents the elimination of the "lapse" of one-quarter year funding for this program in the first year. A 25% lapse rate in funding was used to account for the time required to fill the positions. The 197 positions were costed at $6.0 million in FY 1982, or 25 percent less than full-year funding because they were presumed to be new positions. As a result of the 12 percent reduction for FY 1982, the 197 positions have, in fact, been used to retain experienced, on-board compliance officers who would otherwise have been separated in a RIF. The agency decided not to separate these 197 employees for the first quarter despite the lack of funding because to do so would have resulted in additional costs for unemployment benefits, severance pay and lump sum annual leave payments.

In order to cover the unfunded personnel costs in the first quarter of FY 1982, a number of non-labor expenditures were postponed or reduced such as ADP, travel, printing and contracting. The one-time delay in these expenditures cannot be continued in FY 1983. Without the $1.9 million annualization the number of positions for this program will have to be reduced by approximately 50 positions. Since the STEP positons are included in the total resources available for Fair Labor Standards Act enforcement, the total FLSA enforcement resources would also be reduced by 50 positions.

FAIR LABOR STANDARDS ACT

In May 1981 the General Accounting Office said the Department of Labor was lax in administering the Fair Labor Standards Act. For example, the GAO contended the Department does not seek the restoration of the full value of illegally withheld wages.

Question: Do you agree with the GAO criticism?

Answer: No; we believe that GAO's criticism was primarily directed at weaknesses in the statute itself and only secondarily at the Department's administration and enforcement procedures. However, the GAO report was critical of the fact that the Department obtained restitution of only about 60% of the backwages found due. We believe this is a respectable recovery rate when consideration is given to the fact that many former employees cannot be located and that many cases in which employers refuse to make restitution voluntarily are not suitable for litigation.

Question: What steps has the Department taken to strengthen the enforcement of the Fair Labor Standards Act?

Answer: In this era of restricted budgetary and personnel resources the Department is carefully targeting its enforcement efforts in areas where violations of the Act are widespread. Every effort is being made to ensure that resources are devoted to productive enforcement activities throughout the nation.

COMPUTERIZING DAVIS-BACON WAGE DETERMINATIONS

Question: Has the Davis-Bacon wage determination process been computerized? If not, why not?

Answer: The Davis-Bacon wage determination process has not yet been computerized. Studies on the feasibility of computerization which were conducted in the past did not prove fruitful. However, we are about to award a pilot contract for the collection of wage data by a private contractor. Ultimately, we foresee the potential of a computerized system within the Department for the issuance of the wage determinations.

REPEAL OF DAVIS BACON

Question: What do you estimate would be the cost savings--to Government and to industry--were the Davis-Bacon Act repealed?

Answer: The Department has no estimate of cost savings that might result from repeal. It should be noted that a 1979 GAO report concluded that repeal of the Davis-Bacon Act would result in cost savings of approximately $715 million. The Department did not concur with those findings, however, because it believed that there was no hard evidence on which to base such an estimate. The Department also believes that to the extent any estimate is predicated upon the elimination of prevailing wage requirements, it would be highly speculative, as it is unclear whether lower wage costs would actually result, and if they did, whether any such cost savings would be passed on to the Government through lower bid prices.

Question: What would be the impact of repeal of Davis-Bacon upon the appropriation for the Department? How many staff positions could be cut as a result of repeal and how much could the Department's appropriation be reduced?

Answer: Based on current staffing levels, an estimated 100 staff positions in the Employment Standards Administration (70 of which would be in Regional and field offices, and 30 in the National Office) could be eliminated if the Davis-Bacon Act was repealed. The Department's Fiscal Year 1983 budget allocates approximately $5 million to ESA for the administration and enforcement of the Davis-Bacon Act.

Question: Is there merit to the argument that savings from repeal of the Davis-Bacon Act might be illusory since higher wages result in greater productivity and better quality products?

Answer: There are those who feel that both the quality of federal construction and the productivity of workers engaged in such work would be reduced were there no requirements that Davis-Bacon prevailing wages be paid. This is a view which is debated at length. However, I am not aware of any definitive studies which have resolved this issue.

DISCRIMINATION CASE BACKLOG

Question: The 1983 budget shows a dramatic decrease in the backlog of unresolved employment discrimination complaints, especially for handicapped workers, despite a substantial decline in staff from the 1981 level. How is it possible to reduce the backlog so much with fewer staff?

Answer: OFCCP is taking a number of steps to expedite complaint processing and reduce backlogs. Principally, these include improving the complaint intake process when the complaint is first submitted; closer time and case management of investigations in progress; and the testing of an expedited procedure to reduce backlogs in the Section 503 (handicapped) and Section 402 (veterans) programs.

In the complaint intake process, initial screening is being improved to assure an early determination that OFCCP has jurisdiction over the complaint, that it is being filed in a timely manner (within 180 days of the alleged violation), and that adequate information is included to indicate a probability that the complaint may have validity. In the past, OFCCP has accepted some complaints which, after being backlogged for substantial periods of time, were then determined not to be covered by the Order, Acts and/or OFCCP regulations. In some cases, this determination was not made until after the investigation was underway. The new procedure will assure timely determination of coverage and validity and result in better service to complainants anc contractors.

Concerning management control, first, the total amount of time being devoted to investigations of complaints has been approximately doubled from original projections for the second half of the current fiscal year. Second, time standards have been instituted for completion of complaint investigations. Field managers thus monitor cases in progress more closely. Other steps include promptly referring a copy of

the complaint to the contractor as soon as possible after receipt for attempted resolution through internal review. In the past, complaints were often backlogged for extended periods of time before sending them to contractors, often just before the investigation of the complaint was scheduled. By providing this information to the contractor at an earlier stage, when the issues involved are relatively fresh and potential contractor liability is low, OFCCP estimates that complaints resolved by contractor's internal review may increase from five percent of cases to approximately 15 percent.

The expedited complaint processing initiative being tested as a means to reduce Section 503 and 402 backlogs is essentially a no-fault procedure which encourages contractors to resolve allegations of individual discriminatory treatment in a somewhat more informal manner than would occur if OFCCP proceeded with a full investigation. For individual allegations which appear to have merit, OFCCP suggests to both parties that an expedited procedure focusing on resolution of that allegation alone may be in each of their best interests. If either party objects, a full investigation is scheduled. For the complainant, such a resolution is more rapid. The contractor also achieves a more rapid resolution without an admission of fault and without a full investigation by OFCCP. This procedure fits the circumstances of many individual allegations of discrimination in the Section 503 and 402 programs.

BLACK LUNG DISABILITY TRUST FUND

Question: Why are the tax revenues not sufficient to meet expected claims?

Answer: While $235 million in Treasury advances will still be needed in FY 1982, even after the coal tax increase of the 1981 Amendments, $394 million in Federal loans would have been needed without the Amendments. Without a tax increase, the amount of loans needed would have continued to increase each year. With the tax increase, FY 1984 is the last year in which the Department projects a Federal loan ($37 million) will be needed.

Most of the large debt to be retired is attributable to SSA's February 1979 modification of Part B review procedures, which increased SSA's approval rate for DOL paid claims from 5 to 29.6 percent.

Question: When will the Fund begin to show a surplus so that it can start paying back the funds it borrowed from the Treasury?

Answer: The Department of Labor estimates that no more loans will be needed after FY 1984, and that the accumulated debt will begin to be retired in FY 1985.

Question: When will the Fund retire all of its outstanding debt?

Answer: The outstanding debt will be totally retired by the end of FY 1993 or early 1994. The date is very dependent upon four key factors: (1) the total amount of future coal production, (2) the split between underground and surface production, (3) the average debt interest rate, and (4) the rate of future benefit adjustments for changes in the cost-of-living.

Question: Does the Department intend to submit any additional legislative proposals for raising the revenue or reducing the payments of the Black Lung Disability Trust Fund?

Answer: Not before recommendations are forwarded to Congress in June 1983, after completion of the two research studies mandated by the 1981 Amendments.

Question: Please provide a table for the Record showing the Fund's projected receipts and expenditures over the next ten years based on current law?

Answer:

FY 1982-1991 Summary of Estimated Black Lung Disability Trust Fund Operations Based Upon Provisions of 1981 Amendments
($ in millions)

FISCAL YEAR	TOTAL RECEIPTS 1/	TOTAL OBLIGATIONS 2/	E-O-FY FUND BALANCE
1982	$527.5	$764.0	-$1745.0
1983	$634.4	$695.0	-$1807.0
1984	$664.8	$700.7	-$1844.0
1985	$706.1	$701.1	-$1840.7
1986	$736.9	$710.2	-$1815.5
1987	$782.3	$706.6	-$1742.5
1988	$832.3	$701.3	-$1621.3
1989	$867.8	$695.0	-$1448.6
1990	$925.9	$682.4	-$1205.1
1991	$978.4	$627.6	-$ 886.7

NOTES:

1/ Includes coal tax revenues and reimbursements from coal mine operators for interim payments paid to their claimants.

2/ Includes annual cost of benefit payments (before operator reimbursements), program administration and Treasury interest charges on outstanding debt.

BACKLOG OF BLACK LUNG CASES

Question: Are the staff resources adequate to keep the backlog from increasing in future years?

Answer: Under proposed staffing and claims receipt projections, the Division anticipates having the staff necessary to adjudicate a claim to an initial finding within 180 days of receipt. Implementation of the 1981 Amendments, however, particularly the transfer provisions, have forced the Division to postpone some post-entitlement work until FY 1983. These secondary workload postponements are not desirable, but will not directly affect our ability to adjudicate pending claims.

Question: How long must someone now wait before his claim is processed?

Answer: The Division still expects claims filed prior to January 1, 1982 to be worked to an initial finding within the prescribed 180 days of receipt. Claims filed since January 1, 1982 are being developed, evidence sought and medical examinations scheduled. In most cases, an eligibility decision on post-Amendment claims must await publication of final regulations expected about June 30, 1982.

Question: What effect will the new computer system have on making further reductions in the backlog?

Answer: The new computer system, in itself, will not have a noticeable effect in reducing claims adjudication inventories. This is because claims adjudication is basically a manual process. The new computer system will, however, provide all users with a quicker, more accurate data base for monitoring claims, processing benefit payments and medical bills.

FEDERAL EMPLOYEE INJURY BENEFITS

In 1978, the General Accounting Office reviewed the Department's procedures for awarding benefits under the Federal Employees' Compensation Act. The GAO found that in 41 percent of the cases examined, benefits were awarded without adequately establishing whether the employee's disability or death was work related. The GAO also found that the benefits were awarded without adequate medical evidence and sometimes without resolving conflicting medical evidence.

Question: What has the Department done since the GAO report to tighten up its procedures?

Answer: Since 1978, OWCP has instituted two new training courses, to instruct claims examiners in adjudication procedures and to give them medical background in certain conditions; begun training of Federal agency compensation specialists in three-day seminars given by OWCP personnel to improve the quality of claims processing and submission by the agencies; published an entirely new procedure manual for claims adjudication, including expanded information for the processing of occupational disease cases; instituted a pilot project to improve the handling of low back cases through sequence for new-hire claims examiners to be given in district offices; encouraged and provided for additional specialist medical advice to be available to examiners in the districts; installed new procedures, with standard timeframes, to give prompt denials to claimants who do not submit full supportive information in support of claims; and, using computer capability, greatly increased management control of claims processing through a nationwide coding system and monthly management reports.

Question: In view of the GAO findings, why hasn't the Department been able to significantly reduce the number of Federal Employee claims awarded?

Answer: The number of Federal employee claims awarded has been significantly reduced when viewed as a percentage of total cases adjudicated.

FY 1976	Closed 151,619	Disapproved 2,660	1.8% Disapproved
FY 1977	Closed 152,153	Disapproved 3,340	2.2% Disapproved
FY 1978	Closed 184,564	Disapproved 8,993	4.9% Disapproved
FY 1979	Closed 203,554	Disapproved 13,117	6.4% Disapproved

Figures from MIS Automated reports

1980	Total Adjudicated 200,069	Total Denied 16,765	8.4%
FY 1981	Total Adjudicated 233,672	Total Denied 29,064	12%

Another telling statistic lies in the cases closed category. There were over 248,000 cases closed in FY 1981. By factoring out the no lost-time cases, cases with leave elected, and continuation of pay cases, among others, we are left with a total of 48,913 cases that were either disapproved or had compensation paid. Of these, 27,533, or 56.3%, were disapproved. These approval/disapproval rates serve as a reasonable surrogate for the claims approval/dissaproval rates.

Question: What steps will the Department take in the future to reduce the incidence of unwarranted claims?

Answer: The Office continues to believe that the best method of reducing "unwarranted" claims is to legislate changes in the law which would reduce incentives to workers to magnify minor injuries, and to resist return to gainful employment. Meanwhile, the Office is continually working to improve training and resource materials for examiners particularly in the area of occupational disease, to obtain greater involvement of employing agencies in monitoring claims, and to closely monitor claimants who are already in receipt of benefits to ensure early return to work or reduction of benefits on a showing of employability. If the low back project continues to show success, it will be expanded to take in other offices, and possible to cover other common work-connected medical conditions.

THIRD PARTY DEBT COLLECTION EFFORTS

In 1979, the General Accounting Office found that the Department was not making a strong effort to recover the cost of employee compensation claims from third parties who might be responsible for the injury.

Question: What has he Department done to strengthen its third-party collection effort?

Answer: In September 1978, the Office altered its procedures for processing third-party cases, directing district offices to refer appropriate cases (including all cases in which an attorney was engaged, and all cases in which disbursements exceeded $1,000) to the appropriate Regional or National Solicitor of Labor.

In March 1979, district offices were directed to designate one or two third-party claims examiners, who would have the responsibility to review all claims in which there was potential subrogation, ensure that all cases with significant disbursements or in which an attorney was involved were referred with full information to the Solicitor of Labor, to keep careful records of all action, and to keep the Solicitor informed of disbursements at regular intervals.

In November and December 1980, designated claims examiners received thorough training in their responsibilities and in identifying potential cases.

In January 1981, the Office entered into an arrangement with the U. S. Postal Service, whereby they identify and follow minor cases, reporting collection and submitting recoveries to OWCP.

In April 1982, the offices were instructed to begin reporting recoveries in more detail, and to report on the outcome of Postal Service action.

Question: How many cases have you processed against third parties in the last three fiscal years and how much was collected?

Answer: Figures for Fiscal Year 1979 are not available.

In Fiscal Year 1980, the Offices identified 16,154 cases, and recovered $7,416,591.

In Fiscal Year 1981, the Offices identified 15,652 cases, and recovered $9,711,408.

The District Offices have apparently not been entirely consistent in reporting recoveries from third party litigation. While some Offices apparently have reported the claimant's gross recovery, others have reported only the refund made to the United States, which would be a portion of OWCP disbursements. New reporting requirements instituted in April 1982 should eliminate ambiguity and result in better data.

STAFFING LEVELS

Question: How can we be sure there is no more fat to be squeezed out of the budget?

Answer: The Employment Standards Administration request for fiscal year 1983 is the minimum required to maintain our programs at the current level of operations. Of the $8.814 million increase for FY 1983 funding levels, $5.729 million is for non-discretionary expenses. The remaining $3.085 million is for ADP improvements and wage surveys necessary under the Service Contract Act. Reductions in the FY 83 request would have a direct impact on program staffing levels, productivity, effectiveness and responsiveness.

Question: Why shouldn't we keep reducing the size of your agency by 16% a year until we find it cannot handle its workload?

Answer: Any budget cuts in FY 1983 would have to be absorbed out of personnel costs since non-labor expenditures were sharply reduced in FY 1982 or by cutting the investments being made by ESA in ADP improvements for all ESA programs. Such a cut would be a major set back in developing the kind of modern data processing for the Workers' Compensation system. On the other hand, a 16% budget cut for Wage-Hour would result in a reduction of 325 positions, the total number of investigations would drop from 70,000 to 48,000. The complaint inventory would rise from 21,500 to almost 36,000 and the average waiting period for responding to complaints would rise from 3 - 4 months to almost one yer. Almost $40 million in illegal wage under payments, affecting 200,000 workers, would go undetected.

The Office of Federal Contract Compliance Programs projects that it will be able to maintain program outputs in FY 82 through regulatory and internal management changes which, combined with training and growing expertise of the staff, will increase efficiency and productivity. Included among these steps are a streamlined complaint intake process, tighter controls on the time spent in completing compliance reviews and complaint investigations, efforts to establish closer liaison with the contractor community to reduce needless confrontation and provide technical assistance to compliance, and simplified procedures.

Were there to be further resource reductions, there would be a direct impact on program outputs.

The effect of the budget reductions is being felt primarily by the Federal Employees' Compensation (FEC) program and the Longshore and Harbor Workers' Compensation Program. The Black Lung program had only a small reduction in FY 82

The percent reduction in the budget did not result in an identical percentage reduction in staffing. By reducing funding for travel, training, ADP, and other support functions, we were able to maximize the staff-years available to process the workload, while minimizing short-term adverse effects. More specific information regarding each program follows:

Performance in FEC has been relatively stable the past several months, with little, if any, deterioration in performance noted. Processing timeframes have been fairly consistent over the past four or five quarters, and the pending case inventory has shown only a slight increase. Similar results have been noted in other output items. That is not to say, however, that the current situation has not created some strains. The reduction in trainingcan affect both staff expertise and morale, and the consequences are likely to show up in later months. Some offices are short of clerical support and claims processors.

One factor to consider in judging FEC's performance thus far is that the program currently has an approved, full-time permanent staffing level that represents a slight increase over FY 1981 Levels and is the highest FTP level ever for the program. Entering FY 1981, FECA had authorized 853 FTP positions plus ceiling for another 200 term appointments (through 9/30/81). This subsequently evolved into 903 FTP full-time equivalents for FY 1982, an increase of nearly six percent for FTP staffing. However, it represents a 14 percent reduction in overall approved staffing levels (853 FTP plus ceiling for 200 terms = 1,053 total). It has been our position that FTP staff are more stable and productive than temporary or term staffing. We believe that, at the very least, 1 FTP position is equivalent to 1.5 temporary/term position. Thus, the increase in FTP staffing does help, to some extent, offset the loss of the 200 term ceiling.

Another factor that has been beneficial in the program's ability to accommodate the reduction has been the moderating workload growth rates. No doubt if the program's workload were increasing at the rate it did in the mid-1970's, the program's situation would be more more adversely affected.

The situation in Longshore is somewhat different. There, deterioration in performance is evident. In the four quarters of FY 1981, Longshore processed 72%, 75%, 71% and 74% respectively of the controverted cases within 60 days. During the first quarter of FY 1981, only 58% of the controverted cases were processed within 60 days. Similarly, 57% of the informal conferences were completed within 45 days, compared to a range of 63 - 69% within 45 days in FY 1981. Other outputs show similar effects, and district office management has made it clear that the strain is becoming very great.

We do not believe it is a constructive approach to permit FECA or Longshore to continue undergoing 16 percent reductions until they reach the point at which they can no longer handle the workload as a means to find the optimum staffing level for each program. We look at our workload and production experience to determine the level of needed staff. The relationship between incoming workload, production, timeliness, and staffing is analyzed to see what can be accomplished with varying staffing levels. Based on this experience, we conclude that Longshore has already reached and has more likely gone beyond the point at which it can adequately handle its workload with current staff. The situation with FEC is somewhat better. Any further reductions will have undesirable consequences in terms of production and timeliness and we will experience a return to the problems and conditions that characterized the program three or four years ago. These problems begin gradually but eventually grow progressively worse as minor problems create major problems resulting in a "snowballing effect" of deteriorating service. Once systemic problems develop, it takes months or years to resolve them, as FEC found out in the mid-1970s. This would be a primary argument against reducing the programs' budget any further. Furthermore, because of the severity of the 16% budget cut, ESA has submitted two FY 1982 supplementalbudget requests that would result instead in an approximate 12% budget cut for FY 1982.

DEPARTMENTAL MANAGEMENT

STATEMENT OF ALFRED M. ZUCK, ASSISTANT SECRETARY ADMINISTRATION AND MANAGEMENT

ACCOMPANIED BY:

LENORA COLE-ALEXANDER, DIRECTOR, WOMEN'S BUREAU
THOMAS F. McBRIDE, INSPECTOR GENERAL

SUBCOMMITTEE PROCEDURE

Senator ABDNOR. We will just hesitate for a few minutes. I guess I am moving along too fast. We will wait for just a few seconds.

[A brief recess was taken.]

Senator ABDNOR. We will now hear from the Departmental Management Assistant Secretary for Administration and Management who will discuss departmental management requests.

Mr. Zuck, is that the way you pronounce your name, or Zuck?

Mr. ZUCK. Let me tell you, Mr. Chairman, it is pronounced Zuck in eastern Pennsylvania where I came from.

Senator ABDNOR. Fine. Thank you.

We welcome you to the committee, Mr. Zuck. And since you just got here, I will state, as I have to earlier witnesses, your entire statement will be made part of the record. And if you care just to summarize your statement, we will go from there.

Maybe you would like to introduce your colleagues who are with you.

INTRODUCTION OF ASSOCIATES

Mr. ZUCK. Yes, Mr. Chairman.

On my left is Dr. Leonora Cole-Alexander who is the Director of the Women's Bureau of the Department, and on my right is Mr. Thomas McBride who is the Inspector General of the Department of Labor.

This account covers a wide variety of activities, and depending upon the nature of the questions, I have some other supporting witnesses should they need to be called upon.

SUMMARY OF BUDGET REQUEST

I will submit the statement for the record and just make a short summary comment.

The departmental management request for fiscal year 1983 is for $158.5 million. It represents an increase of $11.1 million over the 1982 comparable level. We are asking for program increases only in the Office of the Inspector General, where we are requesting an additional 52 positions and $2 million in additional program funds.

The remainder of the increase—$6.4 million—is for mandatory increases.

I think, Mr. Chairman, with that general summary, I will proceed to answer your questions.

INSPECTOR GENERAL PROGRAM INCREASE

Senator ABDNOR. Very good, Mr. Zuck.

You led right into my first question. We often hear about more bodies being added. The obvious question is, "Why?" You do propose to add 52 more inspectors general to audit what? That is going to increase audits 10 percent. Is that the idea?

Mr. ZUCK. It would increase the total staff to a level of 516.

Senator ABDNOR. Yes; I believe you said you would increase audits by 10 percent over fiscal year 1982. Did I pull that out of your statement?

Mr. MCBRIDE. Mr. Chairman, it would increase total staff by 10 percent and the total number of audits by 40 percent. I think more importantly, in addition to increasing the number of audits, it enables us to apply audit oversight to some major programs such as unemployment insurance and workers' compensation where, historically, there has not been a high level of audit attention.

In our view, there is a lot of money that can be saved by increased audit coverage in those areas.

Senator ABDNOR. That would mostly be where it would be concentrated?

Mr. MCBRIDE. That and CETA. CETA has been our stock in trade, if you will, for the audit business in the Department of Labor and has so preoccupied our audit staff that they have given insufficient attention in the past to these other multimillion dollar program areas.

CONTRACT AUDIT EFFORT

Senator ABDNOR. How much is budgeted for the contractual audit work in fiscal 1983 as compared to fiscal 1982?

Mr. MCBRIDE. It will be slightly over $17 million, which represents a very substantial increase. A large part of that is due to the need to provide greater audit coverage of the unemployment insurance program.

You know that UI program benefits approach $17 billion. There has been very little Federal audit effort there. There are error rates, overpayment rates, which we are very concerned about. We think we can have a significant impact in reducing fraud and waste in that program.

Basically, these audit contracts are both for governmental audit groups who would do the audit work and for private certified public accounting firms who do the work on contract for us.

Senator ABDNOR. They will be intensified?

Mr. MCBRIDE. That's correct.

Senator ABDNOR. The audit policy.

WOMEN'S BUREAU TRAINING EFFORTS

In your training programs, what does the Women's Bureau intend to do to encourage local sponsors of Federal employment training programs to more adequately address the employment of and training needs of women?

Do you have any thoughts on that?

Dr. ALEXANDER. We are already working very closely with local government officials, providing technical assistance to them to assist women in moving into some of the job training opportunities that are available to them.

Senator ABDNOR. With your existing resources, has the Women's Bureau been able to provide technical assistance to CETA prime sponsors to overcome the sex stereotyping in job placement?

Dr. ALEXANDER. To this point, we have been.

Senator ABDNOR. To what extent does the Women's Bureau support employment and training programs for women in skilled, nontraditional jobs?

Dr. ALEXANDER. During fiscal year 1982, we have had an initiative for increasing the number of women in apprenticeship positions. This initiative is operating in all 10 of our Federal regions. We are holding regional training workshops to provide information, materials, and assistance to employers, union officials, and others; and, we have already seen an increase in women moving into apprenticeship jobs.

DEMONSTRATION PROJECTS

Senator ABDNOR. Ms. Alexander, how does the Women's Bureau intend to utilize the $1 million of the CETA funds earmarked for demonstration, employment, and training projects?

Dr. ALEXANDER. We will be working with our regional offices in establishing model projects to enable women to enhance employment opportunities. Also, we will work closely on alleviating some of the sex stereotyping that women have encountered in the past.

We will be sponsoring conferences on issues of concern to working women, such as child care and women in management. By addressing the support services needed for women to work, we will help women move into well-paying employment.

Senator ABDNOR. How much are you earmarking in your 1983 budget for that?

Dr. ALEXANDER. Funds have not been earmarked in the 1983 budget at this point, but I am certain the Secretary will be allocating some funds to the Women's Bureau for program initiatives.

IMPACT OF PROGRAM DECREASE

Senator ABDNOR. What will the impact of the proposed reduction in Women's Bureau staff from the 79 level down to 70 be? Will that have a great impact?

Dr. ALEXANDER. We will have to curtail some of our activities. For example, we will not be able to continue with the number of publications that we have prepared in the past and disseminated throughout the country. We will not be able to provide the same level of technical as- sistance as we have in former years. And we will have to place less emphasis on some of the projects, especially those relating to the displaced homemakers and some of those we have had for helping young women make the transition from school to work.

Senator ABDNOR. I was recalling last year from the Senate report language. We earmarked 79 positions for the Women's Bureau. Now, I guess the budget request at that time was only for 79. Have you been able to fill all those 79 positions?

Dr. ALEXANDER. We have been in a RIF posture with the Department of Labor, so we have just now reached the point where we can begin to fill those positions.

VETERANS EMPLOYMENT SERVICE

Senator ABDNOR. Will the newly appointed Assistant Secretary for Veterans Employment have authority to coordinate all veteran issues involving the Labor Department and help resolve problems?

Mr. ZUCK. The Assistant Secretary for Veterans Activities is the principal advisor to the Secretary in the Department on veterans activity and will coordinate all the Department of Labor veterans activity.

Senator ABDNOR. He will?

Mr. ZUCK. Yes.

Senator ABDNOR. Do you think the veterans reemployment rights program and disabled veterans outreach program should be transferred to this office?

Mr. Zuck. The question of transferring the Office of Veterans Reemployment Rights was raised with the Secretary by the chairman, Mr. Schmitt. The Secretary indicated that, at the present time, that program would not be transferred, but it was his ultimate objective to transfer the program.

With respect to the disabled veterans outreach program, that will be under the direction of the Assistant Secretary for Veterans Employment.

Senator ABDNOR. It will?

Mr. ZUCK. Yes.

Senator ABDNOR. What has been the impact of cutbacks in the State employment service offices on referral and placement of veterans in jobs?

Mr. ZUCK. I do not have the precise answer to that in numbers. We can provide them for the record.

Senator ABDNOR. Would you please?

Mr. ZUCK. We will do that.

[The information follows:]

IMPACT OF STATE EMPLOYMENT SERVICE REDUCTIONS

Accomplishments for the first quarter of fiscal year 1982 compared to the same 1981 period show a decline of 18.7 percent in veterans referred to jobs and a decline of 19.3 percent in veterans placed in jobs. The reduction in referral and placement activity for all applicants is about the same as for veterans.

UNEMPLOYMENT RATE FOR VETERANS

Senator ABDNOR. Good. I think that would be fine.

Is it true that the overall veterans unemployment is virtually about the same as the national unemployment rate? Is that a correct statement?

Mr. ZUCK. That is essentially correct, but not quite. The Bureau of Labor Statistics, in their monthly report on employment and unemployment, reports an overall unemployment rate for veterans 25 years of age and older. That rate in March was 9.1 percent. The March unemployment rate for the total population was 9 percent.

However, if one looks at the most difficult area of veterans unemployment in the age category of 25 to 39, the veterans unemployment rate in March was 9.9 percent, whereas the rate for nonveterans in that same age category was 8.7 percent, considerably lower.

If one looks at the specific category of 25- to 29-year-olds, the veterans unemployment rate was 17 percent, whereas the nonveteran unemployment rate of males in that age category was 10.5 percent.

So in those age groups, particularly 25 to 29, the unemployment rate for veterans is substantially higher than it is for nonveterans.

Senator ABDNOR. It sounds like there is still quite a need, then, for help with locating jobs for our veterans. Is there any special reason for that big discrepancy?

Mr. ZUCK. I can't explain it. This age category represents veterans of the Vietnam era who continue to have problems in obtaining employment.

Senator ABDNOR. Do most of those young veterans come out trained particularly well in any one area?

Mr. ZUCK. Obviously some do and some do not have skills that are readily available for transferance to the civilian economy.

Senator ABDNOR. Those that do, can they readily find jobs usually?

Mr. ZUCK. I am not sure readily is the right word. Those that are highly qualified certainly find it much easier in obtaining jobs than those who are not.

IMPACT OF REDUCTIONS FOR PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED

Senator ABDNOR. Under the continuing resolution, Federal staff for the President's Committee on Employment of the Handicapped has been cut from 50 down to 39 positions. What has been the impact of this reduction in the ability of the President's committee to perform its work?

Mr. ZUCK. The President's committee is not part of the Department of Labor, but is included in our budget. Let me ask Mr. Bernard Posner who is the executive director of the committee to speak to that if I could.

Senator ABDNOR. Just state your name again, if you will.

Mr. POSNER. I am Bernard Posner, Executive Director of the President's Committee on Employment of the Handicapped.

We previously had authorization for 50 positions. We have never really achieved that employment level. We have never had 50 people on board.

When our positions were cut back to the present level, it became a more realistic reflection of those people we actually do have.

Senator ABDNOR. In other words, then, it has worked quite efficiently?

Mr. POSNER. We are comfortable.

Senator ABDNOR. Very fine, 50 is a nice number, but if you can do it with 39, all the better.

Mr. POSNER. The 39 people is our total of whom about 20 are professional people. The rest are support people. We are able to conduct an entire national program with 20 people because we make extensive use of the volunteer members of the President's committee.

We work in tandem with our nonpaid volunteers of whom there are about 200 very active.

Senator ABDNOR. Well, fine.

What type of projects are being eliminated that your standing committees used to engage in? On page 46 of the budget justification, it says projects cut in half were 28 in fiscal 1981 and 14 in fiscal 1982. What kind of projects are you eliminating?

Mr. POSNER. Well, we are eliminating projects that no longer have real crucial relevance to the handicapped people in America today. At one time, we were quite active in trying to cope with the plight of disabled people who were disadvantaged.

This became too much for a President's committee, for any group like ours, so we have had to back away from it.

Also, we have cut back on our efforts in behalf of eliminating architectural barriers in the United States because we now feel there is enough momentum already to carry that forward without our leadership.

Also, we have reduced some of our promotional efforts in the area of people covered by affirmative action, because we now feel there is a great need to reach employees who are not covered by affirmative action who make up half the employees in this country.

In a couple of words, we are able to redirect our priorities readily to meet changing times.

Senator ABDNOR. Have you had much criticism from the outside on that?

Mr. POSNER. Every time we eliminate anything, we get criticism by the basketful, but we have to go ahead with what we think is right, at least what our membership feels is right.

EMPLOYMENT RATE OF HANDICAPPED PERSONS

Senator ABDNOR. Has the employment of the handicapped suffered disproportionately during the current recession?

Mr. POSNER. That is a hard one to answer. I would say that handicapped people without training have been particularly hard hit—people without specific training for specific skills.

We have an odd situation in the United States. There are job shortages in a lot of areas. And surprisingly enough, handicapped people are not being prepared for these kinds of occupations in the numbers that they should be.

For example, I have learned that the Electronics Industry of America has established a projects with industry program, giving priority to disabled people in jobs in electronics. They have had a hard time finding candidates to fill the jobs. Where are they?

Senator ABDNOR. Well, your committee is looking into that, maybe steering in the direction of training them?

Mr. POSNER. So far, we have had four special conferences, bringing together a wide variety of forces in America, calling attention to the disproportionate supply and demand and doing what we can to try to bring a turnaround; yes, sir.

PREPARED STATEMENT AND SUBMITTED QUESTIONS

Senator ABDNOR. Very good.

I have some additional questions, but I think I will give them to you in writing and have you answer them for the record. You can do that at the time you correct your hearing transcript.

Mr. Zuck and colleagues, we appreciate your coming today and look forward to your written answers to our questions.

Thank you very, very much.

Mr. ZUCK. Thank you.

[The statements and the questions, which were not asked at the hearing but were submitted for response for the record, follow:]

STATEMENT OF ALFRED M. ZUCK

Mr. Chairman, members of the Subcommittee, thank you for this opportunity to appear before you. I am prepared today to outline for you the budget recommendations for two Departmental Management Appropriations--Salaries and Expenses and Special Foreign Currency.

Departmental Management -- Salaries and Expenses

This appropriation is responsible for formulating and overseeing the implementation of policy and management activities of the Department. In addition, this appropriation includes a variety of operating programs and activities which do not logically fall within the administration of other programs of the Department. In addition to providing funds for executive direction, adjudicatory, and management functions of the Department, this appropriation provides funds for:

the Office of Inspector General,
the Office of Civil Rights,
the Women's Bureau,
the President's Committee on Employment of the Handicapped,
the Bureau of International Labor Affairs,
the Solicitor's Office, and
the Veterans Employment Service.

The budget request for Fiscal Year 1983 for the Departmental Management Salaries and Expenses appropriation is $158.5 million and 2,667 positions, of which $129.8 million is from general funds, $15.6 million is from the Unemployment Insurance Trust Fund and $13.1 million is from the Black Lung Disability Trust Fund within the Employment Standards Administration.

This Fiscal Year 1983 request represents a net increase of $11.1 million and 43 positions over the comparable base in Fiscal Year 1982. Included in the Fiscal Year 1982 base is a net increase to the 1982 appropriation of $9.5 million and 121 positions resulting from comparative transfers affecting the appropriation. In accordance with provisions of the Veterans Rehabilitation and Education Amendments of 1980 which mandated the establishment of the Office of the Assistant Secretary of Labor for Veterans Employment, two hundred and twenty-five positions and $8.4 million associated with the Veterans Employment Service are being transferred from the Employment and Training Administration to the appropriation. Two positions and $44,000 are being transferred from the Departmental Management working capital fund to the administration and management function of this appropriation to support further decentralization of the payroll functions to the departmental management account. The Employment and Training Administration, Unemployment Trust Fund, is transferring $5.2 million to the Office of the Inspector General to provide for audits of the State Employment Security Agencies. To provide for court reporting services, $844,000 is being transferred from the Employment Standards Administration to the Adjudication program of this appropriation. This appropriation will transfer one hundred and six positions and $5,037,000 associated with the Trade Adjustment Assistance

Program from the Bureau of International Labor Affairs to the Employment and Training Administration. This transfer will integrate the trade adjustment assistance programs with the regular unemployment insurance programs and place accountability for Departmental performance under the Trade Act on the predominant operating component, namely the Employment and Training Administration.

In the Fiscal Year 1983 budget request, there are two major components of the requested net increase of $11.1 million. The first is the net cost of built-in increases and decreases which require a net increase of $6.4 million. The second part is the net cost of program increases and decreases which require a net increase of $4.7 million.

The Fiscal Year 1983 built-in or mandatory increases totalling $8.9 million include: 1) the additional cost of within-grade promotions, 2) the cost related to annualization of the January 1982 executive level pay increase, 3) the increased costs of automated data processing services, 4) the cost related to the October 1981 General Schedule pay increase that was absorbed in part in 1982 as directed by the President's economy actions, and 5) other items explained in detail in the summary of changes.

Mandatory decreases of $2.5 million reflect the annualization of decreases in personnel compensation and benefits resulting from Fiscal Year 1982 personnel reductions, decreases in administrative and management support services,and the decreased cost of other services.

A program increase of $4.9 million and 52 full-time permanent positions is requested for the Office of the Inspector General for Fiscal Year 1983 to provide for mandated coverage of CETA programs and for significant increases in audits and investigations of critical DOL internal operations. The program increase will bring about a more effective, balanced audit program; more timely investigations of Departmental programs and internal operations; will enable greater participation in investigations relating to labor unions and labor laws, therefore enhancing the Inspector General's ability to eliminate waste, fraud and abuse in programs involving the Department of Labor.

As a result of economy actions directed by the President, a reduction of nine positions and $159,000 is requested for the Women's Bureau. While the Women's Bureau will continue its leadership role in developing policy and programs to improve the welfare of working women, training sessions and technical assistance will be reduced.

Departmental Management -- Special Foreign Currency

The budget request for Special Foreign Currency in Fiscal Year 1983 totals $200,000 which is necessary to support travel to a world-wide conference in New Delhi for all Labor attaches. Holding a world-wide conference will contribute significantly to efforts to acquaint all overseas labor attaches with the current reporting needs of the Department, discuss strategies for achieving U.S goals in the international labor field, and to consider methods for increasing the effectiveness of the Labor attache corps.

I appreciate the opportunity to appear before the Subcommittee. Here with me today are other officials of the Department whose organizations are funded by this appropriation. We will be happy to answer any questions.

STATEMENT OF BERNARD POSNER, EXECUTIVE DIRECTOR FOR THE PRESIDENT'S COMMITTEE ON EMPLOYMENT OF THE HANDICAPPED

Thank you for inviting me to say a few words about our FY 1983 budget request.

Once more, we come to you asking for no increase in personnel nor in programs. Our 1983 budget request is for $1,973,000 - a modest increase over 1982, but it covers only mandatory costs, none others.

We have the capability of operating within tight budget constraints because we are able to be flexible: to remain on top of changing times and changing priorities; to respond to them quickly and, I hope, effectively.

That's what we hope to do during the 1983 fiscal year. I would like to present just a few highlights.

First, because our volunteer membership represents a rich cross-section of America, private and public sectors, we have developed the capacity to bring this diversity together to discuss emerging issues involving handicapped people.

For example, we recently called such meetings to spotlight problems in the proper preparation of handicapped people for employment; to spotlight the possibilities of block grants for handicapped people for 1983; others.

Our special meetings for 1983 will include: new and unusual development in rehabilitation, and how effective they are; the federalism and what it means to Governors' and local Committees on the Handicapped; affirmative action in 1983; others.

We try to do more than hold meetings; highlights and participant recommendations will be printed and widely distributed - Congress included.

Second, we plan to conduct special campaigns for disabled people themselves, encouraging them to prepare for proper jobs and to enter the labor market. Much is going on for disabled people; they need to be made aware - special hiring programs by Electronics Industries of America; National Restaurant Association; Association for Retarded Citizens; Epilepsy Foundation of America; others; also Section 503 and 504, prohibiting discrimination; also the special efforts of many of the corporations of America.

Disabled people have to know about these; to prepare; to seek out the right jobs. Hence our campaign.

Third, last year, as you know, was the International Year of Disabled Persons. Both the Senate and House have recently passed resolutions establishing 1982 as the National Year of Disabled Persons.

There's good reason for this. Many useful projects got under way in 1981 - in some 1,800 communities, with major corporations, with volunteer organizations of all kinds. It would be a shame for them to cease before they had a chance to establish themselves with deep roots. Another year -1982 - is needed.

The President's Committee, and Governors' Committees, are playing leading roles in this new national effort. It is logical that we do so. We have acquired the capacity to bring together diverse voluntary forces in the services of disabled people. And so many of these IYDP projects deal with employment opportunities.

Fourth, we are remodeling ourselves, and our volunteer standing committees, to make more effective use of volunteers in all walks of life.

Volunteer groups need more than the will to act. They need tangible suggestions of projects that need to be done; they need back-up material; specifics. We intend to provide it - to veterans' groups, women's organizations, service organizations, youth groups, Chambers of Commerce, many more.

Finally, we also intend to go forward with our on-going activities -elimination of architectural barriers; mass media promotion aimed at employers; reduction of stigma against mentally restored workers; promotion of greater independence by retarded people; special projects for the labor movement; more employer seminars on the subjects of pain as a disabling condition and potentials for work of people with heart conditions; encouragement of handicapped organizations to grow stronger; and more.

Thinking about these diverse projects and goals, one thing seems to underlie them all - the capacity of the President's Committee to be in tune with changing times and changing priorities; and its capacity to bring together a diversity of society to try to come to grips with them and solve them.

Thank you.

Questions Submitted by the Subcommittee

DISABLED VETERANS OUTREACH PROGRAM STAFF

Question: Does the Labor Department have a position on whether staff of the Disabled Veterans Outreach Program should be "grandfathered" into their jobs, and thus protected from general Employment Service layoffs?

Answer: The Department of Labor has not taken the position that DVOPs in the program as of October 1, 1981, are automatically "grandfathered" into the positon. The relationship between the DVOP positions and general Employment Service layoffs is currently under consideration.

MINIMUM WAGE STUDY COMMISSION

Question: After a three-year period of investigation, the minimum wage study commission submitted its seven-volume report to the Congress on various aspects of the Fair Labor Standards Act. What was the total cost, both in direct funding and in support services from the Department of Labor, of the work of the Commission?

Answer: The Minimum Wage Study Commission expended $3.2 million from direct appropriation to the Commission. In addition, various Department of Labor components assumed $1.4 million of Commission expenditures for studies of mutual interest. The Commission assumed all costs for administrative support provided by the Department through the Working Capital Fund billing procedure. The total cost of work of the Commission was $4.6 million.

Question: The Commission arranged for a series of contract studies on such questions as indexation of the Federal Minimum Wage, and the potential impact of a youth sub-minimum wage. Can you provide us with a breakdown of the costs of those contract studies on a study by study basis?

Answer: The cost of contract studies for the Minimum Wage Study Commission follows below:

Topic of Contract Study	Cost
1. The effects of the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) on employees of conglomerates	$206,000
2. The personal and family income distribution effects of the minimum wage on four race-sex groups	89,000
3. The employment and unemployment effect of the overtime provisions of the FLSA	56,000
4. The effects of minimum wages on the South Carolina labor market 1938-1978.	94,000
5. The distributional effect of increasing the minimum wage.	31,000
6. The employment & unemployment effects of the minimum wage	25,000
7. Survey and study of employers responses to minimum wage increases	474,000

8.	The employment and unemployment effects of a youth sub-minimum wage and certification program	117,000
9.	The short-run inflationary and employment effects of raising the minimum wage	70,000
10.	The posible effect of minimum wages on employment and inflation	67,000
11.	Structual models of minimum wage effects: Estimates for wage and coverage policies	58,000
12.	Long run impact of a minimum wage on employment and a wage structure	$ 18,000
13.	The regional effect of the minimum wage	49,000
14.	To expand the scope and increase the sample size of the July 1980 Quarterly Agricultural Labor Survey to collect detailed information on Agricultural wages and employment (paid to the U. S. Department of Agriculture)	500,000
15.	The impact of minimum wage legislation on the distribution of earnings between blacks and whites in the United States.	98,000
16.	Wages paid to handicapped workers in sheltered workshops and the effect of labor FLSA exemption certifications for sheltered workshops	121,000
17.	To estimate the impact of the minimum wage on employment demand	31,000
18.	To produce tabulations of estimates from July 1980 Quarterly Agricultural Labor Survey.	73,000
19.	The inflationary effects of minimum wage indexation	80,000
20.	The effects of changes in the minimum wage on union bargaining	32,000
21.	A historial overview of the FLSA	10,000
22.	Income distribution effects of the minimum wage	9,000
	Total	$2,308,000

POLICY RESEARCH

Question: Your 1980 Publication on the Office of the Assistant Secretary for Policy, Evaluation, and Research lists about 250 research and evaluation projects that were completed over the period 1970 through 1979. How have these papers aided the Labor Department in developing more efficient and effective programs? Give specific examples.

Answer: Projects were undertaken in a number of areas that aided in the development of more efficient and effective programs. One variety of projects directly supported policy and program development. Among them are the employment and training studies. For example, several projects brought forth the concept of displacement e.g., federally-subsidized jobs programs create jobs that would have been funded anyway by local governments. These studies also estimated the effect of CETA programs and directly affected policy development (Studies 3-049, 3-057 and 4-036). As a result CETA was modified to include provisions aimed at reducing the displacement problems.

A second variety of projects were those which directly contributed to informed policy debate but were not enacted or adopted as part of a specific program. For example, the PSE job simulation model was developed to analyze a massive job creation program for the poor (Study 3-058). The model provided insights into the problems associated with job creation for the poor and influenced the design of proposed legislation. While the job program itself was not enacted, the model assisted in analyzing the consequence of utilizing a longer period for measuring a participant's income. The findings were incorporated into CETA to increase targeting on the most needy. An additional example is the research projects which stressed the effects of minimum wage on youth employment (Studies 3-059, 3-060, 3-061, 3-062, 3-063, 3-064, 3-065 and 4-039). This work helped spark interest in the 1970's in a youth subminimum wage concept and later provided some of the impetus for the Youth Entitlement Projects and more recently provided a starting point for the debate about a youth subminimum wage.

Question: Could you say that what we have learned from these projects has saved the Government money? How?

Answer: Several kinds of projects have provided information that resulted in program savings. First, since virtually all of the findings of the studies described above were incorporated as design features in programs, resources were conserved. (For example, efforts to reduce displacement under CETA meant a reduced cost of actually generating each net additional job through that program.)

Second, direct savings were realized in some areas. For example, the research supported changing the method of penalizing job quitters. This research showed that the widespread method of penalizing applicants who resigned their positions (temporarily disqualifying recipients who resigned) didn't reduce the number of weeks of UI benefits drawn and meant that those who voluntarily resigned received tha same total benefits as those persons who were involuntarily laid off (Studies 3-071, 3-073, 3-074, 3-076 and 3-084). Subsequent to that research many states have adopted another method for handling quitters (making them reestablish eligibility through employment) which has reduced the benefits payout and therefore the costs of the program.

A third sort of research was aimed at achieving cost savings by indicating the choice of one policy option over another. Studies had some influence on the decision to raise the UI tax base amount, which has probably meant that employers have lower labor force turnover rates and consequently unemployment is lower and unemployment insurance benefit costs are lower (Studies 3-085, 3-089 and 3-090).

Question: Aren't many of these studies highly technical, and do not lend themselves for policy or program recommendations?

Answer: Many of the projects are highly technical and involve theoretical and empirical research that is quite complex. However, the complexity of the studies does not necessarily detract from their policy relevance and often is crucial to obtaining informative research.

One sort of technical study was not tied directly to a government program but undertook basic research. For example, studies that stressed the dynamic nature of the labor market, particularly the turnover in workforce status of individuals fall into this category (Studies 2-014, 2-016, 2-018, 2-061 and 2-063). While these studies involved complicated theoretical and empirical methods, they were not aimed at providing immediate policy recommendations. Nevertheless, the study has provided important insights into the temporary nature of an individual's unemployment experience. These insights have influenced the analytical approach and resulting structure of a variety of programs that deal with unemployment. Among these programs are unemployment insurance, employment programs for welfare recipients, and youth employment programs.

A second sort of highly technical study was geared directly toward providing policy and program recommendations. The studies on displacement are examples of this type of effort. Another example is provided by studies dealing with evaluation methodology (Studies 3-050, 3-051, 3-052, 3-054, 3-055, 3-056, 4-002, 4-005, 4-016, 4-020, 4-023, 4-025, 4-029 and 4-038). These have involved highly complex and difficult econometric issues. Many of the evaluation studies are of great importance since they have provided the framework for collecting and interpreting data used for judging the effectiveness of employment and training programs.

COEXISTENCE OF UNEMPLOYMENT AND JOB VACANCIES

Question: There has been considerable discussion over the past several months of the co-existence of general high unemployment and job vacancies for certain skills. Do other nations have such problems, and if not, why not?

Answer: The international data on unemployment and vacancies do not permit us to give an unambiguous answer to this question. Although there are standardized measures of unemployment which permit comparisons across countries, the data on vacancies are not standardized, and since the measurement of vacancies varies significantly across countries, meaningful international comparisons are very difficult and may be misleading. Moreover, the very notion of "shortages" in certain skills is difficult to define and measure in an economically meaningful way.

The Organization for Economic Cooperation and Development (OECD) recently reviewed the survey evidence in a number of countries and found some indications of skill shortages in Canada, and declining or constant shortages in the United Kingdom, Germany, and Japan. The OECD report also presents some, admittedly very crude, evidence which suggests that the relationship between vacancies and unemployment in the major OECD countries may have changed in the 1970's. The study found some worsening of the unemployment-vacancy relationship in Australia, Canada, Finland, Japan, Norway, the United Kingdom and the United States, and no significant change in Belgium, France, Germany, The Netherlands and Sweden. The study concludes by noting:

> The evidence on skill shortages must be interpreted with extreme caution. Although they may arise in some cases from rigid occupational structures, credentialing in education and vocational training, or from employers' lack of flexibility in redesigning jobs and providing training, they may often be of a fairly transitory nature related to required training times.

Of the major industrial countries, Japan appears to have the relatively smallest problem with simultaneous high unemployment and vacancies, although the weak OECD evidence suggests that the relationship may be worsening in Japan. The reasons for the apparent lack of serious problems in Japan are speculative at best. During periods of rapid economic growth, Japanese firms (especially large firms) appear to be able to retrain and redeploy workers to meet changing skill requirements within the firm. In periods of slower growth or where sectoral adjustments are required, the Japanese government has sometimes assisted firms with training subsidies.

At this time, we are unable to do much more than speculate about the reasons for Japan's apparent success in allocating labor efficiently. The Bureau of International Labor Affairs is engaged in a joint research project with the Japanese Ministry of Labor on the process of labor market adjustment in the United States and Japan, and we hope that this research will improve our understanding of the role of the firm in retraining their workers for new occupations.

Question: From your studies of foreign nations' policies dealing with structural and cyclical unemployment, what models might you suggest for implementation in the United States?

Answer: Our analysis of labor market policies abroad suggests that policies which distort firms' and workers' responses to market price and wage signals are inefficient and in many cases ineffectual in dealing with cyclical and structural unemployment. For example, some foreign governments require firms to retain (usually temporarily) redundant labor during downswings in the business cycle. While this policy provides job security during economic slowdowns, it also reduces the average level of employment over the business cycle and reduces firm's ability to increase output in times of increased demand.

Similarly, foreign governments have sometimes attempted to alleviate structural unemployment problems for young and relatively unskilled workers with (usually temporary) employment subsidies. While this policy generally encourages firms to hire the targeted groups, their increased employment opportunities often come at the expense of lower employment oppotunities for non-targeted workers, and the increase in demand for targeted groups tend to be temporary, declining when the subsidy program ends. These subsidy programs do not appear to solve the underlying structural problems.

Many foreign governments are increasingly aware that distortionary labor market and social policies may be a significant cause of unemployment problems. The Organization for Economic Cooperation and Development (OECD) has recently completed an analysis of "positive adjustment policies" which concluded that in order to promote long-run non-inflationary growth, which is itself probably the best way to deal with unemployment problems, labor market policies should be directed toward enhancing labor market flexibility and adaptability, in part by reducing government-imposed and other barriers to adjustment and mobility. We subscribe to this view and believe that labor market policies ought to be evaluated in terms of their overall impact on the efficient functioning of labor and product markets.

PRODUCTIVITY GROWTH SLOWDOWN

Question: We are all aware of the current productivity growth slowdown in the United States. Many have argued that a significant part of our problem lies in our management techniques. Have Bureau of International Labor Affairs studies of foreign nations uncovered any lessons or techniques which could be adopted in this country?

Answer: The Office of Foreign Economic Research in the Bureau of International Labor Affairs and the Japanese Ministry of Labor are conducting a joint research project comparing the process of employment adjustment in the United States and Japan. The project focuses on the specific methods by which firms in Japan and the United States reallocate employment in response to changing technology and market conditions and on the nature and extent of government assistance to firms in the process of adjustment. The industries being studied include the electronics, steel and textile industries in both countries, the communications and rubber industries in the United States and the shipbuilding industry in Japan.

The preliminary findings suggest that large Japanese firms are able to reallocate their workers more efficiently and with fewer costs to workers than similar U.S. firms. Furthermore, the greater flexibility of Japanese firms in reallocating employment is an important factor in maintaining and improving the productivity of the Japanese economy. The preliminary findings also suggest that the differences between U. S. and Japanese firms are not as great as many people assume. The greater internal flexibility in Japanese firms arises from differences in a limited number of features of the internal organization of employment differences which are not unique to firms in Japan.

In large Japanese firms, the successful adjustment of employment to changing market conditions was the result of the conscious development by firms of the ability and willingness of workers to change. The ability of workers to change was the product of a system of internal, on-the-job training which was designed to develop a broadly skilled worker capable of performing a number of jobs within the firms.

The training system includes the systematic rotation of workers through different jobs as normal steps in a worker's career. The training system is supported by a wage and compensation system which provides workers with incentives to develop a broad range of skills. The willingness of workers to adapt to new situations is the product of the efforts on the part of Japanese management to build consensual labor-management relations. Job security, worker involvement, and constant communication and information-sharing between labor and management have served to develop a high degree of worker morale and commitment. Having secured the ability and willingness of workers to change, Japanese firms have been able to adapt to all but most extreme changes in technology and market conditions with minimal adverse effects on workers.

Learning from the Japanese may be most productive for the United States in the area of labor-management relations. The Japanese have successfully built a base for cooperation between labor and management--the joint recognition of the economic constraints facing the firm. The areas of information sharing, communications and worker involvement, the areas where we currently observe changes in many U.S. firms, have been important components of the process of building a common basis for cooperation which greatly aids the process of adjustment.

Question: What have studies shown regarding foreign techniques for productivity enhancement?

Answer: International comparisons of industrial competitiveness conducted by the Office of Foreign Economic Research of the Bureau of International Labor Affairs demonstrate that increasing investments in productive resources in an economy and allocating and reallocating labor and capital efficiently are two critical factors enhancing a nation's productivity. Foreign experiences, both positive and negative, demonstrate the necessity of adapting quickly and efficiently to changing conditions and the adverse consequences of failing to adjust. The problems that governments, both here and abroad, have faced in encouraging adjustment is the trade-off between maximizing the benefits of reallocating resources while simultaneously minimizing the costs that adjustments necessarily impose.

In the case of Japan, the reallocation of labor has proceeded largely at the initiative of labor and management in the major sectors of the economy. The costs of the geographical and occupational mobility of workers have been borne by firms. Where necessary, the adjustment process has been supported by Japanese government subsidies for the retraining and transfer of workers into new occupations and for the conversion of firms to new lines of business. Government employment policy has been directed toward encouraging adjustments within firms and reducing the burden of adjustment on workers by subsidizing firms to carry out an adjustment with its existing work force.

The importance of the role played by labor and management in enhancing adjustment and productivity has been further suggested by the comparative analysis of labor-management relations in the United States and its major trading partners. Evidence regarding the general state of a nation's labor-management relations and its performance in international markets, although subject to numerous caveats, qualifications and problems of interpretation, does suggest a positive relationship between good labor-management relations and high productivity.

Comparative studies have also indicated the importance of learning from our own experience. Numerous successful, innovative programs have been introduced by U.S. firms to enhance productivity and to adjust more rapidly, including increased job security, improved training programs, quality improvement programs and shop-floor committees to handle worker problems. Improved relations between labor and management have also been a focus of many of these programs. These programs are a uniquely American response to the economic environment and, as such, may serve as a more relevant model for U.S. firms seeking to enhance productivity.

WOMEN'S BUREAU'S ROLE IN TRAINING PROGRAMS

Question: Does the Women's Bureau plan to capitalize on innovative local programs which have been successful in placing women in non-traditional high paying jobs at a relatively low cost?

Answer: The Women's Bureau has worked with most of these local programs over the years and, in fact, assisted some of them in getting established. The Bureau will continue to work with them and to use their experiences in developing new projects and/or in providing technical assistance to employers. Some of these projects, such New Directions for Women in Baltimore and New Jobs for Women in Philadelphia, are working with the Bureau to implement and follow through on the Women in Apprenticeship initiative. This initiative is bringing together employers, union officials, State and local employment and training officials, outreach program operators, women's organizations, and women at the State and local level for training on how to recruit, place, and retain women in skilled training positions.

Question: Will it be necessary to repeal the one-year project sponsored by the Women's Bureau to train employment and training personnel to increase recruitment, placement and retention of women in apprenticeship occupations?

Answer: The Bureau's Women in Apprenticeship initiative to train employers, union officials, State and local employment and training officials, outreach programs operators, women's organizations and women on how to recruit, place, and retain women will be presented in at least 40 local sites during FY 1982. It will reach between 2000 and 4000 people directly. In addition, an evaluation of the impact of these training sessions on the skilled crafts training system will be launched. When the Bureau is cut by nine positions in FY 1983, this initiative will have to be eliminated since staff resources will not permit its continuation.

Question: What is the Women's Bureau role in linking training programs to employers' affirmative action requirements?

Answer: The Employment and Training Administration and the Office of Federal Contract Compliance Programs have been working together to develop a program to link training initiatives to affirmative action requirements. The linkage effort is being reviewed and revised within the Department. As it progresses, the Bureau expects to be involved in discussions on how best to implement the linkages. In addition, the Women's Bureau regional offices will work with both ETA and OFCCP to ensure that the training being received by women will address the needs of employers and that women trainees will be actively sought to respond to employers' affirmative action requirements.

AUDITS OF CETA PROGRAMS

Question: Can you provide the total amount for questioned costs, disallowed costs, and recovered costs relative to each contract or grant awarded by the Employment and Training Administration's Office of National Programs during Fiscal Years 1979, 1980, and 1981?

Answer: A breakdown of activity related to the Office of National Programs follows:

Funds awarded -- $718 million in 1979; $774 million in 1980; $764 millin in 1981.

Costs questioned -- $22 million in 1979; $15 million in 1980; $11 million in 1981.

Disallowed costs -- $33.7 million cumulative at 1981. (Data not available by fiscal year.)

Recovered costs -- $843,264 cumulative at 1981. (Data not available by fiscal year.)

Question: What were the major reasons for the questioned or disallowed costs?

Answer: Major reasons for the questioned or disallowed costs fall into two categories: ineligible participants and poor grantee financial management systems.

Problems associated with ineligible participants have decreased in recent periods due to implementation of provisions contained in the 1978 CETA Reauthorization. Included in the 1978 Reauthorization was a requirement for the establishment of an eligibility determination and verification system at each grantee responsible for the intake of participants. These systems have helped to significantly reduce the number of ineligible participants found in the CETA program.

The most consistent problem encountered during audits of CETA programs administered by the Office of National Programs involves grantee financial management systems. Audits have identified (1) systems which permitted payment of funds for items for which there was no supporting documentation to indicate why the expenditures should have been charged to CETA, (2) systems that have allowed expenditures to be charged to CETA when grantee budgets could no longer legally absorb the expenditures, and (3) systems which permitted charges to be allocated to CETA when the expenditures should have been allocated to other programs.

One factor contributing to these conditions has been the large use in the past of sole source procurement for awards of grants and contracts. The lack of more competitive awards has resulted in organizations continuing to receive funds although audit reports have documented the poor financial management capability of the organization. Competitive awards subject the applicant and its management capacity to closer scrutiny and help to identify those applicants who do not have adequate systems, financial or otherwise, to perform the assigned tasks.

IMPROVED MANAGEMENT OF ETA OFFICE OF NATIONAL PROGRAMS

Question: What is labor doing to ensure that this situation does not recur?

Answer: The problems involving ineligible participants are being corrected with implementation of provisions which require establishment of eligibility determination and verification systems.

To address the remaining problems, the Employment and Training Administration has issued a Directive which establishes policies, standards and procedures in the management of procurements administered by the ETA National Office and directs ETA officials to:

a. Make maximum use of competitive award procedures when issuing grants and contracts.

b. Issue grants and contracts to organizations whose fiscal integrity and capabilities are established and documented.

c. Issue Letter Contracts or authorize retroactive grants and contracts only under stringent conditions.

d. Clearly specify the work to be performed by grantees and contractors.

e. Rigorously monitor and assess the performance of grantees and contractors.

f. Maintain a complete record of all transactions in an official grant/contract file substantiating ETA management of the procurement process.

Requirements and standards in this Directive are reflected in the performance standards of ETA individuals responsible for carrying out these functions and tasks.

A good example of implementation of provisions contained in this Directive is the conditions under which awards were made to Migrant and Seasonal Farmworkers grantees for Fiscal Year 1982. ETA requested the Office of Inspector General to conduct special systems reviews of 13 applicants for refunding. OIG reviewed 11 specific areas considered to have a significant bearing on the applicant's ability to successfully operate a program. These areas included procurement, cost allocation procedures, overall accounting and financial management systems, documentation retention, and organizational structure. The review rated six of the applicants as unacceptable in one or more of the 11 areas. Four of the six applicants were refunded contingent upon implementation of corrective action plans. The remaining two applicants were not refunded.

AUDIT RESOLUTION AND FOLLOWUP SYSTEM

Question: What new auditing procedures have you installed or do you recommend to prevent future build-ups or unresolved audits?

Answer: The Department of Labor has developed an Audit Resolution and Follow-up System which is designed to maximize the use of audits as a management tool, identify major problems, ensure timely resolution and implementation of audit recommendations, and provide needed management information.

The Department is now resolving questioned costs in a timely manner. At September 30, 1981, there were only 8 unresolved audits over six-months old (containing $9.7 million in questioned costs). At March 31, 1982, there were only 10 unresolved audits in this category ($2.1 million in questioned costs). All of these audits missed the 180-day deadline because of legitimate extenuating circumstances, such as active investigations. The Office of Inspector General tracks the resolution process very closely and is quick to notify management when an audit begins to approach the deadline.

SUBCOMMITTEE RECESS

Senator ABDNOR. Our subcommittee is going to recess until 1:30 p.m. and will be meeting in this room to discuss funding for the Occupational Safety and Health Administration, the Mine Safety and Health Administration, and the Bureau of Labor Statistics.

I thank all our witnesses today.

We stand in recess.

[Whereupon, at 11:20 a.m., Thursday, April 22, the subcommittee was recessed, to reconvene at 1:30 p.m. the same day.]

(Afternoon Session, 1:45 p.m., Thursday, April 22, 1982)

Occupational Safety and Health Administration

STATEMENT OF THORNE G. AUCHTER, ASSISTANT SECRETARY

ACCOMPANIED BY:

DAVID C. ZEIGLER, DIRECTOR, DIRECTORATE OF ADMINISTRATIVE PROGRAMS

MICHAEL TURNER, OFFICE OF POLICY, LEGISLATION AND INTERAGENCY PROGRAMS

MARY ANN WYRSCH, DIRECTOR, OFFICE OF BUDGET

SUBCOMMITTEE PROCEDURE

Senator Schmitt [presiding]. The subcommittee will come to order.

I apologize for being a little bit late. This session of our hearings on Labor Department budget requests deals with two mildly controversial agencies—the Occupational Safety and Health Administration, or OSHA, and the Mine Safety and Health Administration, or MSHA. We will also receive testimony from the Bureau of Labor Statistics.

We will begin with the Assistant Secretary, Thorne Auchter, who, for the last year, has been grappling to improve workplace safety and health, despite the negative image which the acronym OSHA often invokes.

Then we will hear testimony from Ford B. Ford, Assistant Secretary for MSHA. Following Mr. Ford's testimony, we will hear from Ms. Janet Norwood once again as Commissioner of the Bureau of Labor Statistics.

Mr. Auchter, would you please introduce your associates and proceed with your opening statement.

INTRODUCTION OF ASSOCIATES

Mr. Auchter. Yes, sir, Mr. Chairman. We appreciate the opportunity to be with you today. On my left is David Zeigler, who is Director of administrative programs. On my right is Michael Turner of our Office of Policy, Legislation, and Interagency Programs. And on my far right is Mary Ann Wyrsch, Director of the Departmental Office of Budget.

Mr. Chairman, I have a formal statement that I would like to submit for the record, and I will briefly summarize, if that's OK with you.

Senator Schmitt. That's fine. Your entire statement will be in our record.

SUMMARY OF STATEMENT

Mr. Auchter. All right, sir. Our budget request for fiscal 1983 is $206,256,000, which is an increase of $10,791,000 over the estimate for

1982. The request provides for program increases totaling $6,340,000, plus net built-in changes amounting to an additional $4,451,000. We are requesting no change in the number of positions.

Our overall agency goal is to provide leadership and assistance for the improvement of workplace safety and health conditions through a comprehensive program of government and private sector activities which affords full and balanced use of the authority vested in OSHA by the Congress.

OSHA's budget request is an expression of these priorities: to promulgate safety and health standards that are clear, precise, feasible, and enforceable through a comprehensive review of existing standards, the promulgation of new or revised standards, and the utilization of professional and scientific expertise in the private sector.

In Federal enforcement, OSHA has begun to improve the targeting of safety inspections in the workplace by identifying and inspecting firms where the most serious safety hazards exist, by identifying and inspecting the most hazardous areas within these firms, and by identifying high hazard manufacturing industries with lost workday injury rates that are worse than the national average for all manufacturing industries.

OSHA is currently examining ways to improve the targeting of health inspections as well.

In the area of State programs, our request is for current services funding for program grants with increases totaling $4.2 million to cover one-half the rise in State operating costs. In addition, OSHA is developing an improved monitoring system, and establishing uniform standards to be implemented throughout all of the States.

In the area of technical support, a program increase of $750,000 is requested for regulatory analyses to be undertaken for existing and proposed standards as required by Executive Order 12291 and the Regulatory Flexibility Act.

For compliance assistance, a program increase of $5.1 million is requested for increasing the availability of consultation services. In addition, a program increase of $520,000 is requested for professional training of Federal and State compliance officers.

The request in the area of safety and health statistics will allow a continuation of basic statistical activities. Under executive direction and administration, the budget request will allow this activity to continue to provide effective leadership, direction, and management of agency resources, as for example, the new integrated management information system.

Mr. Chairman, thank you for this opportunity to be with you today and I'll be glad to answer any questions that you may have.

TRAINING FUNCTION

Senator SCHMITT. Well, thank you. According to press reports, you are planning to move the Office of Education and Training from its Washington, D.C. headquarters to Des Plaines, Iowa. Des Plaines? OK, well, it's Des Moines, N. Mex., so—I tried. I tried. [Laughter.]

No, I'm serious. There is a Des Moines, N. Mex. It's a whistle stop, practically, on a road up in the northern part of the State.

What is the rationale for this move?

Mr. Auchter. Mr. Chairman, we took a look at the way the whole agency functions, and have been for the last year. We have both a national office and field reorganization commencing. The national office reorganization involves the move of the Office of Training and Education to OSHA's training institute in Des Plaines, Ill., right outside of Chicago, for a couple of reasons.

One, I believe that the individuals who are responsible for the development of the curriculum should be located in the same place as those folks who are responsible for the delivery of the curriculum, so that they can share and exchange ideas on a regular basis. That has not been done in the past.

I think that the staff that's responsible for planning training programs should be in direct contact with the instructors, as well as the students, to have the opportunity to observe those programs that they have designed and see how they operate.

I think that it will provide better coordination between the training institute's staff and the Office of Training and Education, which is responsible for curriculum development.

And for those reasons, we think it's a move that makes an awful lot of sense.

Senator Schmitt. Does any of the work of the office depend on experts who are with other aspects of OSHA in Washington or other Federal agencies?

Mr. Auchter. I'm sure it would from time to time, yes, sir. We have an emphasis program that we're putting together right now on the training institute. As I said, it's located in Des Plaines. It's actually probably 3 or 4 miles from Chicago's O'Hare International Airport. It's a terrific location for us. We can bring people in there very easily from all over the country. We serviced nearly 4,000 individuals through the OSHA institute last year. This is not a small operation.

In addition to that, we provide training and education for our consultation program personnel, which we do through all the 50 States and 6 U.S. jurisdictions. We also provide training for State plan compliance officers. It seems to me to make an awful lot of sense to have all those folks involved at one focal point.

Senator Schmitt. Do you expect to save money?

Mr. Auchter. Yes, sir, we do.

Senator Schmitt. In what aspects of the program? Travel?

Mr. Auchter. The initial cost will probably be somewhere around $300,000, we think, for the transfer of the functions and positions and so forth to the institute. After that, we anticipate a savings of some $240,000 a year on an annualized basis, based on a number of factors, not the least of which is travel. In addition to that, we'll be able to consolidate other offices that we have here in Washington and move those people into the Labor Building. We have two satellite offices that we currently use. We can stop paying rent there and bring them directly into the Labor Department.

So there are a number of factors we have taken a look at.

STATE GRANTS

Senator SCHMITT. The administration has requested shifting $3.8 million from contractual studies in order to provide additional funds to the States. Do you need this transfer in order to avoid disruption of State services?

Mr. AUCHTER. Yes, sir, we certainly do. As you know, many of the States' fiscal years expire or end on June 30. We need some very rapid action on this particular part of our program to avoid any disruption of those State plans. And I'm sure if such action doesn't occur, I would think between now and the end of May, they'll have to start making plans to start laying people off because our funds will expire.

I don't know how many States are involved on that sort of basis, but, of course, the States do have different funding years and what we're trying to do is redistribute those funds. As you know, this is no increase in our budget; this is just a transfer from other parts of our program mix into the State planning area so that we can prevent any disruption there.

Senator SCHMITT. But it does require legislation. It can't be done as a reprograming.

Mr. AUCHTER. That's correct, yes, sir.

Senator SCHMITT. Why isn't it part of the urgent supplemental request if it's that kind of a timeframe?

Mr. AUCHTER. We are having a discussion with OMB currently to see if we can add to that list on the urgent supplemental basis. It is very important for the State plans.

Senator SCHMITT. Well, you'd better get them moving as fast as you can. I think the supplemental is going to start leaving this station. One never knows.

Mr. AUCHTER. I was talking to them about it yesterday, so we hope to have some action shortly.

STATE PROGRAMS

Senator SCHMITT. Are you all still fighting with New Mexico or have you worked out your problems?

Mr. AUCHTER. We are having a love-in in New Mexico, Mr. Chairman. I promise. [Laughter.]

Senator SCHMITT. Besides that kind of activity. [Laughter.]

Have you worked out the problem with the State jurisdiction over the OSHA programs?

Mr. AUCHTER. Oh, yes, sir. As a matter of fact——

Senator SCHMITT. You're not fighting each other in court any more or anything like that?

Mr. AUCHTER. No, no, we've given major emphasis to State plans across the board since I took this job, and I've met with the State designees four times in the last year. The last time was in Sante Fe, by the way. I'm getting ready to meet with them again in May. So we have a good ongoing dialog and as a result of that dialog, we have eliminated dual enforcement in State plan States. We have cut our numbers of Federal monitors in half in State plan States. And further, we have come up with a new monitoring system that will use computers to share and analyze information on a daily basis, so that for the first time a State like New Mexico, or one of the other State plan States, can compare its activity to Federal OSHA, which Federal OSHA has never allowed before.

So we think that there are a lot of improvements coming in the way we deal with the plan States and they with us.

Senator SCHMITT. When you say that they can compare with Federal OSHA, can they compare with other States as well through that system?

Mr. AUCHTER. If both States agree, they can. That will be a function of the system. But they will both have to agree for that to occur.

Senator SCHMITT. Now does that also mean that, although you will not have dual enforcement, you will be able to monitor the State performance?

Mr. AUCHTER. Yes, sir.

Senator SCHMITT. What kind of leverage, then, do you have to insure that they're meeting the Federal guidelines?

Mr. AUCHTER. Once again, for the first time, we will be able to monitor on an objective basis.

Senator SCHMITT. OSHA? Objective?

Mr. AUCHTER. Yes, sir, absolutely.

Senator SCHMITT. Good. That's a change.

Mr. AUCHTER. This computer operation will allow us to gather and analyze data, and the analysis of the data will point up about 100 different indicators for comparison. If there is some sort of deviation from the norm we would then raise the question with the State and ask them for further information on the reason for this particular deviation.

I think that this will be a tremendous management tool for all of us.

VOLUNTARY COMPLIANCE ACTIVITIES

Senator SCHMITT. In your opening statement, you described a number of steps being taken to strengthen the emphasis of safety and health efforts on voluntary compliance activities. What is really new about these activities that haven't been conducted under previous administrations?

Mr. AUCHTER. Well, we have taken a broad brush approach with it, really. This began, I suppose, with the San Onofre nuclear power plant project in California. It was a four-party agreement between Bechtel, the National Constructors Association, California OSHA, and the California Building Trades.

We, in essence, approved a program change to allow California OSHA to participate. They put together a labor-management committee onsite. It has been functioning for about 3 years. They've shown a lost workday case rate reduction of some 39 percent in that 3-year period. California OSHA has exempted that particular site from regularly scheduled inspections. The labor-management committee has responded to some 35 or 36 employee complaints over that period of time. All have been corrected. They do regular self-inspections on the jobsite. It seems to work very, very well, where both labor and management have agreed to give it their highest priority and fullest commitment.

We took that sort of approach and——

Senator SCHMITT. That's comparable to the approach MSHA uses in some mining operations, is it not?

Mr. AUCHTER. I don't know. I really don't know.

Senator SCHMITT. I think one of the few areas where MSHA was ahead of OSHA in terms of voluntary compliance activities was in the field of joint labor-management activities. It might be helpful if you two got together and compared your notes on it.

Mr. AUCHTER. We will do so. We took that approach and expanded it into other industries. So we have basically two sorts of programs and we published those approaches in the Federal Register. There are actually five or six different styles, but there are only two basic approaches, one dealing with management and organized labor and one dealing with management and an unorganized work force, to see if we can put together programs in the workplace that recognize good safety and health practices.

Senator SCHMITT. Does this include the development of emergency response teams within each shift of workers?

Mr. AUCHTER. No, it does not.

Senator SCHMITT. Well, that's something that MSHA has in their programs, if I remember correctly, is very specifically organized emergency response teams trained to be active on each shift.

It's part of the normal work force, but they have specific tasks to undertake in any kind of an emergency.

Mr. AUCHTER. OSHA's standards already require individuals on the worksite trained in first aid, CPR, and so forth.

Senator SCHMITT. It sounds to me like MSHA might have a little more formal organization of that activity.

Mr. AUCHTER. We are pursuing that and we'll come out with some firm guidelines here shortly, as soon as the record is closed.

SAN ONOFRE POWERPLANT PROJECT

Senator SCHMITT. San Onofre is turning out to be a model situation in many other respects, as I understand it. Prior to licensing, you may or may not be aware—is that San Diego Light & Power? Anyway, the managing utility contracted with an independent consulting group, which turned out to be General Atomic, to do a complete and indepth analysis of the plant design and all aspects that would be reviewed for final licensing of the plant.

And as a consequence, a number of—not a large number, but a number of—concerns that would have delayed licensing were identified before the fact, fixed, and licensing occurred very quickly, I think, what, about 2 months ago, final licensing?

Mr. AUCHTER. Yes, sir. As a matter of fact, I was out there while those corrections were being made.

Senator SCHMITT. And it was sort of accidental that General Atomic got into that. It was the first one they did, but apparently, it was quite successful and it's something that I think we ought to encourage other nuclear plants and other plants with some kind of licensing criteria before operation to bring in an outside objective group that can act as a preliminary licensing analytical team in order to identify problems that might come online and would, in turn, assist in the safety analysis as well.

Do you see increasing labor and management interest in the San Onofre model?

Mr. AUCHTER. I see increasing interest, yes, sir. I will tell you that the interest is split. A number of groups are very interested in pursuing that sort of approach. There are some that absolutely refuse to even consider it, which is fine, because this is not something that we would mandate. This is a voluntary approach and if you don't get that sort of strong commitment, there's no reason to pursue it.

Senator SCHMITT. What are the reasons given for not liking this particular approach?

Mr. AUCHTER. Oh, there are some elements of organized labor that say that this, somehow or other, infringes on the employee rights and takes the place of OSHA inspections and OSHA responsibility and some other things like that.

Senator SCHMITT. When they say employee rights, are they speaking of collective bargaining rights?

Mr. AUCHTER. I think they're talking about employee rights under the act, the right to complain and OSHA's response and so forth.

Senator SCHMITT. We'll try to get some comments from the other side on that before we're through with these hearings.

FEDERAL INSPECTION ACTIVITY

Do you think that the shift of emphasis toward voluntary compliance is great enough now that we must maintain and continue to maintain last year's level of direct inspection activity?

Mr. AUCHTER. Yes, sir, I do, certainly, for the foreseeable future. We have about 1,200 compliance positions. We'll make about 52,000 inspections in 1982 and probably a little over 53,000 in 1983. Our direct coverage responsibility is about 3 million workplaces. That's really just a spot check. That's not just targeted inspections; that's all inspections.

I think if we conduct our business as safety and health professionals and not as the Nation's police force, that our inspections can be a very valuable tool in the area of safety and health, provided we keep in mind we need to leave something positive behind us after the inspection is over with.

Senator SCHMITT. Your budget proposes deletion of several OSHA bill language riders, so called, added by Congress over the past several years. Since OSHA has been able to live with these restrictions without noticeable difficulty, why shouldn't we just continue to have them in the fiscal 1983 appropriations bill?

Mr. AUCHTER. Well, Mr. Chairman, it's not that I would generally disagree with the riders. We think that some of them simply are no longer necessary. That's basically the reason that they really don't bother me particularly one way or the other.

Senator SCHMITT. Are there any specific provisions of the existing bill language riders that you find objectionable, or is it just that you view them as redundant?

Mr. AUCHTER. Most of the ones that we're recommending for deletion we are already doing through administrative action anyway, and we would certainly not deviate from that course—the small farms amendment, the hunting and fishing amendment, those sorts of things. We're not going to be in those places, anyway.

Senator SCHMITT. What about the next administration, 6 years from now?

Mr. AUCHTER. You might need to put them on again.

Senator SCHMITT. You might need to put them back on. OK.

INSPECTION TARGETING PROGRAM

Under your new inspection targeting program, how are you instructing inspectors to economize on their time so that they operate within the highest hazard establishments and concentrate there on the most serious hazards?

Mr. AUCHTER. Mr. Chairman, as you know, it has been difficult over the years for OSHA to try and focus its inspection resources down into the most hazardous worksites. We began a program last October 15 to attempt to do that and we think it's working very well.

Basically, we compile the high hazard industry list. We rank SIC codes, 20–39, which is manufacturing, based on their lost workday case rates. That ranking goes out to the area offices. The area director uses that same ranking system to rank the individual worksites in his geographic location that fall within those industries. That becomes his target list.

The inspector goes out to the individual worksite using the data that's available at that location and compiles the individual lost workday case rate for that worksite. If it's below the national average for manufacturing, the inspection is terminated. If it's higher than the national average for manufacturing, the inspection is conducted.

There are some possible deviations. If the lost workday cases, even though below the national average rate, were all in one particular location, we would inspect that location. If we got an employee complaint while we were there, we would respond to the complaint.

But it's a way for us to go in and have a presence in the worksite, to deal with both employers and employees, because we conduct those opening interviews before we compile the statistics. And then if we see that we're in a location that has a lost workday case rate below the national average, which is 5.2 lost workday cases per 100 employees per year, we terminate the inspection. We have made a point of contact. We have brought the level of consciousness up, but we've minimized our time in the worksite and we've minimized the employer's and employees' time.

By the same token, we know that when we do find the location that is above the national average for manufacturing, that they need our services, and that we have the opportunity, the greatest opportunity, to do what Congress told us to do, which is to reduce injuries and illnesses. This is an effort to continue to try and drive the lost workday case rate down. And as an example of how that works, when we started this, the lost workday case rate was 5.6 per 100 employees for manufacturing. So that was our cutoff point. As soon as it went down to 5.2, we dropped our cutoff point.

So we're continuing to try and push this down. It seems to be working well.

Senator SCHMITT. Now you apply that without any other discrimination other than what you described to large and small businesses alike?

Mr. AUCHTER. Well, of course, the riders are in effect.

Senator SCHMITT. I understand. By small, I don't mean small by definition, but smaller than big.

Mr. AUCHTER. I would say that the area office ranking does not take that into account. There is a priority system that is given. I'm not sure that it takes into account numbers of employees. So I think that those are the only variables. The ones that I mentioned I believe are the only variables.

Senator SCHMITT. Are there business locations, industrial locations that have low-accident rates relative to the national average, lost-time rates, but when they have an accident, it's particularly serious just because of the nature of the technology?

Mr. AUCHTER. There are types of industries where that occurs. That does not occur, however, in these SIC codes, 20 through 39. We target manufacturing, those SIC codes. The lost workday case rate is a pretty good measure of what's going on in there. We also target construction. Those are two targeted areas that we are into on a regular basis. For instance, during the first quarter of this year, 46 percent of all our inspections were in construction.

Senator SCHMITT. Well, as long as there are accidents, we would like to see that every one of OSHA's inspections are targeted on a real problem.

Mr. AUCHTER. Yes, sir, we would, too.

Senator SCHMITT. And as you noted last year, I believe, or someone noted last year, at that time, approximately two-thirds of OSHA's inspections did not result in penalties for serious violations, which is great if it meant that no accident-prone industries were being neglected.

NEED FOR TRAINING STANDARDS

Mr. AUCHTER. Let me tell you what else is coming out of this. We are finding a very small increase in the number of serious violations per inspection where this occurs. Something fewer than a 2-percent increase, as I recall. And yet, we know that when we do make a complete, wall-to-wall inspection, we're in the workplace that has a higher than average lost workday case rate. It begins to point to the fact that possibly standards are not the solution, because actually what we cite, of course, is the violation of standards.

For that reason, OSHA is currently working on a format to pinpoint the need and the requirements for training and education in the workplace, rather than just citing a standard. And we'll do that through not only compliance, of course, but through all the consultation and training and education services that we have.

Senator SCHMITT. Well, there is some merit to that philosophy in that no matter how good your standards are, if people make mistakes, they're going to get hurt.

NEW DIRECTIONS TRAINING GRANTS

Your budget maintains the New Directions training grants program at the current level of $6.8 million. What problems have you encountered in this program? First, you might give us a brief description of it. And then, what plans do you have to improve its effectiveness in 1983?

Mr. AUCHTER. Mr. Chairman, as you know, the New Directions training grants program was created to provide seed money—let me emphasize that—seed money for new organizations to deal with safety and health. It is not designed to provide ongoing funds for any organization. As a matter of fact, one of the criteria by which we judge the grants program is that the grantee must show that it will be fully independent of Federal funding after a 3- to 5-year developmental period.

In other words, the third year should be the apex funding year for the Federal funds that go in. In the fourth year, our increment would drop off and the grantee's funding would go up; that is, the amount of money that is supplied. In the fifth year, it would go up again and ours would be at its smallest level. In the sixth year, they'd be off our books.

So this is a way to create new organizations dealing in safety and health, hazard abatement, and reduction of injuries and illnesses around the country on a regular basis.

For that reason, we think that the $6.8 million funding level is appropriate because it's a constant turnover of funds out in those locations.

Problems that we have identified? Well, let me go back to the positive side in that our newly implemented criteria for judging these grantees state that the grantees must document that their primary focus is the reduction of workplace hazards. In addition, they are required to emphasize labor-management cooperative efforts in their activities. Materials developed and training conducted are reviewed by OSHA for their objectivity; that is, dealing on an objective basis with safety and health issues and no other purpose. These are Federal funds. And that the grantees must provide evidence of progress toward independence of Federal support.

When I took this job, we had about 157 grantees. We currently have about 128 grantees funded, because we did take a substantial cut in the New Directions grant funds. It was fair and appropriate. I think the dollars that we have are adequate for the purpose. I think it's a good program, provided this monitoring system we've set up does its job. We believe it will.

In addition to that, we used to monitor a lot of grants out of the national office and provided very minimal contact. We have changed that. The regional offices are now responsible for monitoring the grantees in their regions. Therefore, we have ongoing contact in the regions with the grantees to insure the work product they come out with deals effectively with safety and health.

Senator SCHMITT. What's the balance between labor groups and employer groups in this new directions?

Mr. AUCHTER. Currently? Let me say that the mix has changed with this current round of funding. Labor organizations get about 51 percent of the funds available. Universities get about 17 or 18 percent. Previously, universities got about 44 percent. They took a major cut in their participation, the reason being that they have a very difficult time coming up with the matching funds.

The previous administration held them out from having to meet that criteria. I don't think that's right. I think this program is designed for all to match and eventually to be independent of Federal funding. So we cut that back.

Employer associations previously got about 7 percent. Under our distribution they're getting currently about 16 percent. They went up. Other nonprofit groups get about 16 percent as well, up from about 11 percent previously. And labor organizations are up from 38 percent to about 51 percent.

So it was really the universities that lost the greatest in participation.

INDUSTRY CHANGES

Senator SCHMITT. We have in New Mexico a major slowdown in an interest industry, portions of which are under OSHA jurisdiction for safety and health purposes—the copper industry. How does OSHA react to a slowdown like that, where there are smelters mothballed and mills mothballed and other aspects under OSHA jurisdiction? Do you have inspectors that are reassigned or do they just go off the list temporarily for inspections? Or what do you do? Or do you do anything?

Mr. AUCHTER. Well, Mr. Chairman, factually, that's not something that we look at on a regular basis. We recently looked at it because we're reorganizing the field and, as you know, we're closing a number of OSHA offices. It was on that basis, workload, that we focused in, among other things.

But on an ongoing basis, we really don't keep an eye on something like that, unless we happen to have an office in a place like Kellogg, Idaho, where Bunker Hill was basically the only industry there. We didn't have an office there, as it turned out, but we were aware of that situation with Bunker Hill and so we would have made an adjustment once that facility shut down. But it would be pretty much of an isolated incident.

Senator SCHMITT. In some cases where we have new facilities being built in the mining industry, surface facilities that would be under OSHA jurisdiction, to what degree do you get involved in monitoring the design of a new converter facility or mill facility or something like that?

Mr. AUCHTER. None whatsoever. We do not have the capability of MSHA's tech support operation at all. That's not the sort of thing that we do customarily, or have ever done. Our tech support operations are more for laboratory analysis, evaluating requests for variances, assisting in determining the need for new standards, taking a look at health issues, that sort of thing. We really have very little capability to go out and assist directly in the workplace.

HEALTH HAZARDS INFORMATION

Senator SCHMITT. Would you briefly describe your responsibilities with respect to toxic substances?

Mr. AUCHTER. We have the responsibility to promulgate health standards as well as safety standards. We have taken a radically new approach in that in recent months. We have come out with a proposal on hazards communication. The previous administration proposed what they called a hazardous labeling standard. Basically, it was just that. It required very extensive labeling of anything that contained chemicals.

The estimated startup cost to industry was some $2.6 billion. We withdrew that proposal, took a look at it, reworked it for 8 or 9 months, and came out with our proposal which has as a major component training and education of employees. It communicates information about hazards, using labels, but not in detail. It talks about the effects of a hazard, such as don't drink this or don't mix it with Product B because it will explode. It has material safety data sheets. It has a backup that goes to the purchaser of the material. And the startup costs to industry are down around $582 million. We project a cut of some $2 billion in the startup costs to industry. And yet, it has a new major component in it, which is training and education of employees. It's a pretty terrific piece of work, we think.

So we're trying to address not only the case-by-case problems of various components, such as proposed rulemaking in the areas of ethylene oxide or ethylene dibromide or some of those substances, but in addition, trying to cover with a broad brush, we think, some 13 million employees, initially.

Senator SCHMITT. How are the responsibilities of OSHA, EPA, the Department of Transportation, and God only knows who else, coordinated in the Government relative to toxic substances?

Mr. AUCHTER. On a very simple basis, we're aware of each others' laws and responsibilities. At the highest level, we meet under the auspices of Dr. Keyworth, the President's Adviser on Science and Technology, on a regular basis; that is, those of us in the regulatory area.

On a special subject basis, we would bring in those agencies affected. For instance, I had some meetings early on dealing with ethylene dibromide. That affects not all regulatory agencies, but those that it does affect, it affects greatly. So we do it in a number of different ways.

Senator SCHMITT. Well, are you standardizing what labeling is going to be proposed or required with these various other groups, including the National Fire Administration and others that must deal with potential toxic substance spills?

Mr. AUCHTER. What we did with our proposal was this. We said, one, this is the kind of information that you would need to put on there. For instance, if you're not supposed to drink this product, put something on the label. It could be as simple as a guy holding a cup to his lips with a red X through it. Plain and simple.

Two, if you have another way to communicate that, that's fine. That's up to you, if it's already there. So we're not mandating that everybody redesign their labels and come up with some uniform approach. Once again, what we have done is a proposal. Our record is open. We are receiving comments on it. Hopefully, we will be able to further refine it.

Senator SCHMITT. Now you are dealing with products that would be found in the workplace.

Mr. AUCHTER. Yes, sir.

Senator SCHMITT. Not products that might be shipped from workplace to workplace.

Mr. AUCHTER. Both, actually. If you're talking about a chemical company that makes chemical A and they ship it to another chemical company and they take A and B and produce product C, you would have labels all along the way.

Senator SCHMITT. Yes; but how do you interact with the Department of Transportation, then, in the question of shipping? They have label requirements, or at least they have been working on them.

Mr. AUCHTER. Because they are the handlers, they would not be covered. This covers SIC codes 20 through 39. This does not cover transportation. We would not mandate that transportation employees would be covered in this area.

EMERGENCY LABELING

Senator SCHMITT. Well, what about within the workplace? Labeling required that if an accident occurs or if a fire is in progress, that those county or city officials responding to that emergency would know what they are dealing with. Do you have any responsibilities there?

Mr. AUCHTER. Yes, sir. The Materials Safety Data Sheet that I alluded to would be the backup information on the labels. For instance, if I bought 10, 55-gallon drums of compound A, each one of those drums would have a label on it that said, flammable.

In addition to that, when I received my shipment, I would get a materials safety data sheet for my file that said, this is what is in compound A. It's these specific substances.

Senator SCHMITT. Yes; but in an emergency, you may not have a chance to read all of that. And water may be, for example, the worst thing that you could add to a fire that compound A was involved in.

Mr. AUCHTER. Well, that's why we have our training and education component in there, so that employees are aware of——

Senator SCHMITT. Well, what if it's not employees that are responding? It's the local county fire department.

Mr. AUCHTER. They'd either better read the MSDS or talk to the employees or the employer.

Senator SCHMITT. You don't think that on the drum of compound A, there shouldn't be at least one or two essential notices of what not to do, or how best to handle that particular problem?

Mr. AUCHTER. Mr. Chairman——

Senator SCHMITT. "In case of fire, don't use water."

Mr. AUCHTER. Well, it might say that on the label.

Senator SCHMITT. You think you might put that on the label.

Mr. AUCHTER. Well, we have a request out for comments on the proposal. Among the issues raised is that sort of approach—don't mix this with product B, don't mix this with water, don't mix this with something else, and how to communicate that.

Senator SCHMITT. Well, you can go overboard.

Mr. AUCHTER. You can.

Senator SCHMITT. But I think you've got to give some thought to the information that may be available to the person most likely to respond to an emergency, and that that information, the essential information, those things that could get them in the deepest trouble, should be on the label, and you would depend on training and the file for more subtleties.

We have a really tremendous problem in this country. Nuclear waste transportation, for example, gets an awful lot of publicity. But the danger that it imposes on the society is minuscule compared to the danger of a variety of toxic and flammable explosive substances that are moving around in this country every day, even now, and that in many cases, an accident that involves a small, local, rural fire department, that group would not necessarily today have access to the kind of information they need in order to deal with the problem.

It's improving. It's definitely improving. But it is still a long way from being ideal. I am a little bit disturbed, I don't get a warm feeling that the coordination of all of this kind of problem is really yet well worked out within this administration any more than it was in previous administrations.

Are you comfortable?

Mr. AUCHTER. Well, I'm not comfortable yet with everything that we do. I'm comfortable with the issues that we have addressed so far. In 1981, with our compliance effort, we have made a lot of changes in our regulatory approaches. We have a lot of things coming to fruition in 1982–84 as a result of that.

The year that we're really focusing in on training and education, on communication, and on consultation is 1982. We've got a lot of work to do yet in those areas, but we'll get there. I'm not comfortable with it yet, but we will get there.

SAFETY STANDARDS

Senator SCHMITT. How many people do you have working on new safety standards as they relate to, I believe, the 23 toxic substances that you cover by your current health standards?

Mr. AUCHTER. I didn't understand the question.

Senator SCHMITT. I believe there are 23 toxic substances that are covered by your full health standards; is that correct?

Mr. AUCHTER. Yes, sir.

Senator SCHMITT. How many people do you have assigned to developing the safety standards—the labeling, the educational programs, what have you—that deals with that 23? I should add that the National Institute for Occupational Safety and Health lists 40,000 toxic substances. I suspect that that list is a little bit long.

Mr. AUCHTER. Well, you can go as long as 575,000. Some people have said that is the real number, and you can pick anything in between.

Senator SCHMITT. Well, you can put water on that list, if you want.

Mr. AUCHTER. Probably. We have about 45 people in health standards, and about 45 in safety standards as well. We are moving ahead pretty well, we believe, on both the health and safety sides. Our new director for health standards is due on board with us next week after a lengthy search, and I'm looking forward to working with him. Our director of safety standards, who has been with us for a period of time, made me a presentation some months ago.

To tell you the kind of work that we're doing in the area of safety standards, OSHA, in its first 11 years of existence, promulgated only 16 safety standards. Between now and the end of 1984, we will promulgate in final rule 16 safety standards. So we are improving the way we function.

Health standards, as you know, take a little bit longer and are more controversial, on occasion. But we are going to devote the same type of management attention to our health standards operation.

Senator SCHMITT. Are these standards promulgated under the Administrative Procedures Act?

Mr. AUCHTER. Yes, sir.

Senator SCHMITT. Give me an example of a safety standard that is currently under development.

Mr. AUCHTER. Concrete forms and shoring is one. We're doing some work in the area of electrical standards, as well as tunnels, and we're doing some work on the diving standard.

GRAIN ELEVATOR STANDARD

Senator SCHMITT. What about grain elevators?

Mr. AUCHTER. We have been working with grain elevators for many years, as you know. I had a meeting in my office last week with some folks from the grain industry, who brought in reams of material for us on studies they had been working on and approaches that they have taken.

OSHA's basic excuse in grain elevators has been that since 1978, the National Academy of Sciences has been doing a study and we've been waiting for the results of that study. They have had a team put together that goes out and investigates grain elevator explosions.

I was under the impression that they were going to have the results by January or February of this year. I have asked my people to get in touch with those folks and see how much longer they think it will be before that study is out. However, we are going to move ahead in the area of grain elevators, regardless of any timing on that. I think that we've waited long enough and we have got a lot of information.

Senator SCHMITT. Has nothing been done since that rash of explosions that we had a few years ago?

Mr. AUCHTER. Not to my knowledge, no, sir. We have been continuing to gather information, if you will.

Grain elevators are not currently even on our high profile list. I don't have a target date for a final rule because everything has been delayed. We were waiting for the National Academy of Sciences study.

Senator SCHMITT. It would seem to me that there ought to be at least a few things that could be done that we wouldn't require the National Academy of Sciences to study.

Mr. AUCHTER. We do have a high profile in our inspection system for grain elevators. That's part of what we call our local emphasis program, and when we're in locations that have grain elevators we go check them regularly. Basically, as you know, what we look for is compliance with the electrical standards and dust requirements.

But as far as a single standard for grain elevators, this is what they ought to look like, here are the hazards, here's how you handle them, we really haven't done that.

I'm supposed to get a proposal on the grain standard within the next 60 days.

Senator SCHMITT. Congratulations.

Mr. AUCHTER. There's no telling how much longer it will take, but we're going to start some action there.

CONCRETE STRUCTURES

Senator SCHMITT. I take it your concrete form standard has been stimulated by several years of high profile examples of the collapse of newly poured or recently poured concrete structures.

Mr. AUCHTER. Yes, sir.

Senator SCHMITT. One of which just collapsed last week, I guess.

Mr. AUCHTER. Yes, sir, east Chicago.

Senator SCHMITT. Have you come to any generalized conclusions of what may be going wrong in these modern concrete structures? Are we moving too fast, not letting it set, getting unusual weather conditions that cause a problem? Are people just not following good design practice?

Mr. AUCHTER. Do I really have to respond to that? I can give you an opinion, but I hate to do it on the record. That's the industry I came from.

Senator SCHMITT. But how soon would we expect to see a proposal on that standard?

Mr. AUCHTER. The proposal should be out about the third or fourth quarter of next year. The final rule in 1984.

Senator SCHMITT. Boy——

Mr. AUCHTER. Mr. Chairman, I think it would be worthwhile for you to be aware of some of the things that I found when I got to this agency. Among other things, we had one fellow who had been working on one standard for 9 years.

REGULATORY MANAGEMENT

Senator SCHMITT. Can't we do something about that?

Mr. AUCHTER. I think we are with our target dates and the reorganization that we are putting together. We just put into effect a regulatory management system that will allow us to track and hit our deadlines more effectively. We're going to improve this. But when we start dealing in the area of toxic substances, and have to do that on a substance-by-substance basis, we'll always be behind the power curve. We'll never catch up to it.

Senator SCHMITT. Well, but there are an awful lot of other people working in related areas—the Cancer Institute of the National Institutes of Health, the Environmental Health Institute.

Mr. AUCHTER. But understand what we have to go through.

Senator SCHMITT. That's why I'm asking whether there really is sufficient coordination to see if all these people working on it are covering all aspects of the problem. I'm not asking you to duplicate their effort.

Mr. AUCHTER. I understand. Our problem is not the science of an issue. That's not the problem. There's plenty of information around on those sorts of things. The problem is the other sorts of tests we have to meet.

PREPARED STATEMENT AND SUBMITTED QUESTIONS

Senator SCHMITT. OK. Well, we're going to have to move on and I appreciate your time and your testimony. We'll insert your statement and also some questions to be answered for the record at this point. Thank you very much.

Mr. AUCHTER. Yes, sir.

Senator SCHMITT. Excuse me. Senator Burdick, any questions?

Senator BURDICK. I have no questions, Senator.

Senator SCHMITT. Thank you, Mr. Auchter.

[The statement and the questions, which were not asked at the hearing but were submitted for response for the record, follow:]

STATEMENT OF THORNE G. AUCHTER

Mr. Chairman, members of the Subcommittee, thank you for this opportunity to appear before you today.

The Occupational Safety and Health Administration's budget request for fiscal year 1983 is $206,256,000, which is a net increase of $10,791,000 over the estimate for 1982. The 1983 request provides program increases totaling $6,340,000, plus net "built-in" changes amounting to an additional $4,451,000. No increase is requested in the number of positions authorized.

When I came to OSHA one year ago, I had a basic knowledge and understanding of the agency, its mission and functions, and where I believed that it should be going. Building on these ideas and studying the Act's legislative history, listening to individuals and organizations representing employers and employees, working with the career staff, and discussing issues with DOL policy officials and the Secretary, we set for ourselves the following overall agency goal:

> "To provide leadership and assistance for the improvement of workplace safety and health conditions through a comprehensive program of government and private sector activities which affords full and balanced use of the authority vested in OSHA by the Congress."

Keeping this goal in mind, we formulated our priorities for fiscal years 1982 and 1983 to encourage a balanced mix of approaches for improving safety and health conditions in the workplace, without favoring exclusively or predominantly one or another compliance strategy, delivery system, or constituency, such as: voluntary compliance versus inspections, State programs versus Federal or health versus safety, or workers versus employers.

During 1982 and 1983, in keeping with direction from the President, OSHA will continue to revise or eliminate occupational safety and health standards that impose excessive burdens, but fail to provide commensurate protections for workers. Our efforts will focus agency resources on those activities and actions authorized by the Act that have a positive effect in reducing or eliminating workplace hazards. Cooperative programs to assist employers in complying voluntarily with safety and health regulations will be expanded. Additional funds are requested to reimburse State agencies and consulting organizations for providing penalty-free, on-site consultation visits to employers' workplaces. Funds are also requested to maintain "New Directions" training grants at the fiscal year 1982 level.

On the enforcement side, Federal safety and health inspectors are expected to conduct an estimated 53,100 inspections during fiscal year 1983, up from the 52,000 inspections projected for the current year. State agencies are expected to make approximately 110,000 safety and health inspections in both years. Matching grant funds totaling $51,481,000 are requested to allow States enforcing occupational safety and health standards under an approved State plan, and States collecting statistical data on job-related injuries and illnesses, to maintain their current activity levels in 1983.

One priority objective of the agency is to increase effectiveness by the systematic management of resources. A key element of this effort to improve management is what we call the "Performance Management Framework," a formal statement of agency priorities, goals and objectives, and action plans, that provides an opportunity for feedback through specific indicators of "effectiveness"-- Are we doing the right things? -- and "efficiency" -- Are we doing these things right?

By paying close attention to these indicators, we are able to manage with existing resources, set priorities, establish individual accountability, evaluate performance, and ensure that agency actions positively affect safety and health conditions in the workplace.

Our budget request for fiscal year 1983 is an expression of these priorities; an action plan highlighting each major activity:

Safety and health standards. In order to address workplace hazards effectively, standards must be clear, concise, feasible and enforceable. The agency will continue to conduct a comprehensive review of standards, and will propose and promulgate new or revised standards as appropriate. By making greater use of the professional and scientific expertise which exists in the private sector, we hope to increase our ability to address problems through the standards process.

Federal enforcement. The agency has initiated new targeting procedures to make more effective use of our resources. General schedule safety inspections will be targeted not only on high-hazard manufacturing industries, but within those industries, on firms with lost workday injury rates that are worse than the national average for all manufacturing. Since October, OSHA compliance officers have been visiting establishments in high-hazard manufacturing industries and, from an examination of the establishment's individual safety record, determining whether a comprehensive safety inspection should take place. The agency is now examining ways to improve the targeting of health inspections, and inspections in other hazardous industries, such as construction. We are also looking at accidents, fatalities, and ways to schedule inspections of hazardous workplaces that are included within relatively safe industries.

State programs. The request provides "current services" funding for State program grants, with increases totaling $4.2 million to cover one-half the rise in State salary levels and other operating costs. This continuing support of State OSHA programs during a period of general budget reductions underscores the agency's commitment to maintaining a true Federal-State partnership for occupational safety and health. The participation of 24 States and jurisdictions in administering approved State OSHA enforcement programs, and of 46 States and jurisdictions in collecting statistical data on job-related injuries and illnesses, greatly increases safety and health coverage for the nation's workers. Efforts are underway to establish more uniform State job safety and health standards, and to develop an improved program for monitoring State operations and their progress in implementing their plans. It is anticipated that during fiscal year 1983 several States will qualify for final approval of their programs pursuant to section 18(e) of the Act.

Technical support. Regulatory analyses will be undertaken for existing and proposed standards as required by Executive Order 12291 and the Regulatory Flexibility Act, to evaluate relevant data on worker risks and benefits, economic and technological feasibility, and the comparative costs of acceptable alternatives. A program increase of $750,000 is requested to bring funding for regulatory analyses to the level requested in fiscal year 1982 prior to the reductions required by the continuing resolution. Most other technical support functions in fiscal year 1983 will be carried on at a level commensurate with the level of inspection activity.

Compliance assistance. High priority will be assigned to training and development efforts to elevate the professionalism of Federal and State compliance officers. A program increase of $520,000 is requested to provide additional funding for the training of compliance personnel. At the same time, the agency will continue to encourage the voluntary cooperation of employers and employees in eliminating workplace hazards. A program increase of $5.1 million is requested to reimburse State agencies for making additional on-site consultation visits in response to an increasing volume of employer requests. If approved, a total of $27.8 million would be available in 90-10 matching funds to provide approximately 31,800 on-site consultation visits to an estimated 26,500 workplaces, one-fourth more than in 1982. In fiscal year 1983, $6.8 million is requested for "New Directions" training grants, the same as in fiscal year 1982, to help employer associations, labor unions, State colleges and universities, and other groups develop their own institutional capabilities for providing occupational safety and health training and related services. A program for assisting the occupational safety and health efforts of Federal agencies will also be fully implemented during fiscal year 1983.

Safety and health statistics. The request allows a continuation of basic statistical activities. Data on work-related injuries and illnesses will be obtained from a nationwide sample that has been reduced to 280,000 employers. Efforts will continue to make expanded use of the agency's new Integrated Management Information System, or IMIS, for policy and operational problem definition, priority setting, planning, resource allocation, and for tracking progress.

Executive direction and administration. The budget request will allow this activity to continue to provide effective leadership, direction, and management of agency resources, including the systematic planning and evaluation of agency programs and performance. Studies of alternative enforcement and inspection targeting techniques, and of voluntary protection programs, will be continued in fiscal year 1983. Research will be conducted to improve the quality and coverage of scientific, economic, and industry-specific regulatory data available to OSHA, and to insure that these data are scientifically accurate and judgmentally sound. Such data will greatly assist the agency in its decisions and rulemakings, to ensure that they are objective and can be sustained in court, and to reduce the levels of controversy and the adversarial spirit that have characterized OSHA actions in the past.

During calendar year 1980, the last year for which published statistics are available, the incidence and severity of occupational injuries as measured by injuries involving lost workdays, dropped significantly. One work-related injury occurred for every twelve workers in the private economy during 1980, compared with a ratio of about one out of eleven in each of the four previous years. The incidence rate for injuries involving lost workdays declined from 4.2 per 100 full-time workers in 1979 to 3.9 in 1980, and the number of lost workdays per 100 full-time workers dropped from 66.2 to 63.7. Work-related deaths in units with eleven or more employees also fell, from 4,950 in 1979 to 4,400 in 1980.

These decreases are encouraging to all who have sought improved working conditions in past years. We are confident that this performance will continue to improve.

Mr. Chairman, this concludes my statement. Thank you for this opportunity to present our budget request to the Subcommittee. I will be pleased to respond to any questions.

Biographical Sketch

Thorne G. Auchter was nominated by President Reagan to serve as Assistant Secretary of Labor of the Occupational Safety and Health Administration (OSHA). He was confirmed by the Senate on March 17, 1981.

As head of OSHA Auchter is responsible for developing, promulgating and enforcing job safety and health programs for workers.

Mr. Auchter worked for 20 years with the Auchter Company, a construction firm in Jacksonville Florida. Prior to becoming executive vice president in 1975, Auchter handled a variety of construction jobs in the company and held responsibilities in diverse areas including safety and health matters.

He served on the Florida Task Force on Occupational Safety and Health in the early 1970's to study OSHA and determine whether the State of Florida should administer its own program under provisions of the OSH Act.

Mr. Auchter is past director of the Northeastern Florida Chapter of the Associated General Contractors; Vice Chairman of the Economic Development Council of the City of Jacksonville; Director of the University of North Florida Foundation; and a member of the Jacksonville Community Council, Inc.

Mr. Auchter attended the University of North Carolina and Jacksonville University where he received a B.A. in management in 1968.

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

STUDIES OF BETTER WAYS TO ACHIEVE WORKPLACE SAFETY

Question: You indicate in your opening statement plans to continue in fiscal 1983 studies of alternative enforcement and inspection targeting techniques, as well as voluntary protection programs. What major studies are currently underway?

Answer: OSHA is currently analyzing over 200 comments from the public about the best way to implement voluntary protection programs. This analysis should be completed in FY 1982 with several pilot projects to test these new concepts planned for implementation in FY 1983. The agency is studying better ways to target resources to the workplace with the most serious hazards. These new studies will serve to refine the safety scheduling system in the manufacturing sector, as well as to develop systems for targeting health and construction inspections more effectively.

Question: What preliminary information is available about promising new approaches to increase workplace safety and health?

Answer: In 1980, OSHA did four studies on the usefulness of labor/management committees as a possible means of more frequent inspections of worksite. The agency has used those reports, especially in the construction industry, to set up labor/management committees on an area-wide basis in Denver, and has asked the New Directions grantees to focus on this topic.

OSHA is also making use of the data on occupational injuries collected through BLS's Supplemental Data System (SDS). This is a source of valuable information on the nature and causes of worker injuries that can be used to target agency resources more efficiently.

Question: How much is budgeted for studies and research in fiscal 1983, compared to fiscal 1982?

Answer: OSHA has budgeted $900,000 for studies and research in both FY 1982 and 1983.

STATE PROGRAM ENFORCEMENT

Question: How are you planning to promote independence of State Plan Programs from Federal OSHA?

Answer: OSHA's ultimate goal is to develop a policy and management framework that will allow greater autonomy to states with effective programs and simultaneously integrate them into the overall OSHA program. Whenever possible, actions have been taken to increase federal/state cooperation by establishing a true partnership with the states.

To this end, quarterly meetings are held with state designees to discuss on-going OSHA activities as well as any problems the states may be encountering. In addition, a Special Assistant for State Programs provides direct liaison with the state designees and provides them with immediate access to the Assistant Secretary.

Concurrent federal enforcement has been eliminated by reassigning federal compliance staff to non-plan states. Further, the agency has initiated an extensive revision of its state plan monitoring system. The number of federal monitors assigned to oversee state performance has been significantly reduced. Task groups were established to develop criteria by which to measure state performance with a representative from each plan state participating. State participation in the agency's management information system is also planned as a part of the revised monitoring system. When states are fully integrated into the management information system, data from that system will be the principal monitoring tool.

OSHA has proposed language in the FY 1982 Supplemental and FY 1983 Department of Labor budget requests, that, if enacted, would allow the agency to grant final approval to eligible states. This would allow even more autonomy to the states.

Question: Do you have any records indicating comparative accident reductions in States with and without State Plans, respectively?

Answer: The BLS annual survey produces injury-illness incidence rates for OSHA recordable cases, lost workday cases, and lost workdays. The survey also produces estimates of the number of fatalities as well as the number of cases related to the above rates. OSHA uses these data to determine the level of hazards of the industry mix within a State to establish required compliance staffing (benchmark levels). These data are also used to establish the High Rate Industry list which forms the basis of OSHA's inspection scheduling system. While there are some statistics indicating comparative accident reductions in States with and without State plans, they are not sufficient to warrant conclusions on the relative effectiveness of the State vs. Federal program.

CONSULTATION SERVICES WITH EMPLOYERS

Question: How do accident rates compare between businesses that have participated in OSHA's on-site consultation program, and businesses that have not had on-site consultation?

Answer: To encourage employers to utilize consultation services, the program was designed to assure the confidentiality of participating employers. Regulations governing consultation stipulate that the identity of employers who utilize consultation services will not be released to OSHA. Consequently, comparative data of accident rates between businesses that have received consultation services and those that have not is unavailable.

Question: How long must a business requesting an on-site consultation now wait before the consultation can be carried out?

Answer: Priority scheduling is given to small high-hazard businesses. The backlog of requests and waiting periods vary slightly from state to state. However, most priority-scheduled businesses are served within one month of the request while less hazardous businesses have a longer waiting period. Overall, the program currently has approximately a six week backlog of work with the longest waiting period about two months. Planned revisions in the data collection system will provide more accurate and detailed information about waiting times.

Question: To what degree will the waiting period be reduced if Congress approves your requested $6.8 million increase for consultation services, for a total of $27.8 million?

Answer: If the $6.8 million is approved, the waiting period for requests will initially be reduced from the current level of approximately one month for priority-scheduled businesses. With increased funding, however, the agency anticipates a concomitant increase in the demand for consultation services. Consistent with previous program experience, this increased demand would tend to reestablish the current waiting period for consultation services.

REGULATORY ANALYSIS

Question: You are requesting a $750,000 increase for regulatory analysis, over the fiscal 1982 level of $3,644,000, to fund two additional studies. Specifically, what new regulatory analyses do you have in mind?

Answer: For all new proposed or final regulations, OSHA must satisfy formal requirements for regulatory impact analyses, environmental impact statements and regulatory flexibility statements. The resources needed to complete these studies, therefore, are linked directly to the number and the complexity of the agency's future rulemaking efforts. Current OSHA plans will require that new analyses be initiated for the development of either proposed or final safety standards covering diving operations, trenching and excavation, shafts, concrete and concrete shoring, single-piece wheel rims, oil and gas drilling, electrical safety, powered platforms, lockout/tagout, and grain handling facilities. The analyses for anticipated health standards will include carcinogen policy, arsenic, respirators, records access, laboratories, and engineering controls policy. Some of these studies will require a minimum of contracted effort. Others will demand extensive and comprehensive industry surveys, sometimes taking several years, to develop the industry profile and the economic and environmental impact data necesary to support OSHA standard setting.

Question: What kinds of regulatory analyses are currently being conducted?

Answer: Projects that are now underway include studies to support new rules for cotton dust, tunneling, ethylene oxide, ethylene dibromide, lead, noise, radio frequency radiation, walking and working surfaces, ladders and scaffolds, and floor and wall openings. In addition, assistance for the analysis of final regulations is being provided for the hearing conservation and the marine terminal standards.

Question: What organizations are conducting these studies?

Answer: The consultants hired to provide assistance in the collection and categorization of the regulatory impact data are typically private sector multi-disciplinary firms that have demonstrated broad expertise in the technology and economics of the potentially impacted industries. For example, experienced chemical engineers, industrial hygienists, economists and other knowledgeable industry analysts compose the teams working on the various chemical substances under study.

SAFETY AND HEALTH STATISTICS

Question: What studies is OSHA undertaking to determine which standards are in greatest need of enforcement for accident-prevention purposes? To what extent could such studies, by indicating standards inspectors should focus on, speed up the efficiency of inspections and increase OSHA's effectiveness?

Answer: OSHA's policy research studies now focus on increasing the efficiency of inspections, on internal workplace safety programs, and on the training of workers as a way of reducing injuries. OSHA's policy research effort has evolved from one which focused primarily on the question "what standards should be enforced" to one which asks "what can be done to ensure compliance with standards between inspections?" The agency is convinced that this latter approach has greater potential for solving workplace problems.

OSHA conducted demonstration projects which led to modification of inspection policies, including adoption of the "records check" in place of complete inspection of safe workplaces. Similar demonstration projects are being considered in the occupational health area.

OSHA's developmental voluntary protection programs now being developed will test the strength and effectiveness of internal workplace safety and health programs as a supplement to regularly scheduled inspections. OSHA's demonstrations in this area are intended to provide an incentive to employers to have comprehensive safety and health programs.

Bureau of Labor Statistics studies indicate a clear need to focus attention on new workers and especially on young workers. OSHA's construction standard, cotton dust standard, and other new standards focus on employee training as an important aspect of injury prevention.

SAFETY AND HEALTH STANDARDS

Question: Why have you assigned only seven workers, or 20 percent of your health standards staff, to develop new health standards? How many workers, by comparison, are assigned to developing new safety standards?

Answer: There are 46 positions associated with health standards and another 45 budgeted for safety standards. Though staff members focus their efforts on particular projects, there is no specific designation of personnel to exclusively develop new or revise existing standards. Instead, the entire staff of both safety and health standards is involved in the full range of activities for standards promulgation.

Question: What new standards (safety and health) are expected in the coming year?

Answer: We plan to initiate rulemaking action on 16 safety standards in FY 1983. There will be nine standards proposed and six standards finalized. In addition, we will issue an advance notice of intent to propose rulemaking on one other standard.

The standards planned to be proposed are:

1. Tunnels and Shafts - Revision
2. Oil and Gas Well Drilling and Servicing
3. Electrical Safety (Construction) - Revision
4. Walking-Working Surfaces - Revision
5. Electrical, Part II, Safety-Related Work Practices
6. Excavation, Trenching and Shoring (Construction) - Revision
7. Floor and Wall Openings (Construction) - Revision
8. Ladders and Scaffolding (Construction) - Revision
9. Grain Handling Facilities

The standards anticipated to be issued as final rules are:

1. Commercial Diving - Revision
2. Exemption of Scientific/Education Diving Operations from Commercial Diving Standard
3. Revocation of Advisory "Should" Provisions
4. Marine Terminals
5. Removal of the Prohibition on Latch-Open Devices for Gasoline Dispensing Nozzles
6. Multi-Piece Rim Wheels - Revision

The Advance Notice of Proposed Rulemaking will cover power platforms for exterior building maintenance.

In addition, rulemaking action for 13 health standards will be initiated. Eight standards will be proposed and five finalized. The standards planned to be proposed are:

1. Lead - Revision
2. Carcinogen Policy - Revision
3. Noise
4. Engineering Control vs. Personal Protective Equipment
5. Respirators
6. Toxic Chemicals in Laboratories
7. Ethylene Dibromide
8. Ethylene Oxide

The standards anticipated to be issued as final rules are:

1. Carcinogen Policy - Revision
2. Hazard Communication
3. Access to Employee Exposure and Medical Records - Revision
4. Cotton Dust - Revision
5. Coal Tar Pitch Volatiles (Amendment of definition)

CONTESTED CITATIONS

Question: A recent GAO report stated that employers who do not contest citations are required to pay the full penalty, but GAO's review of selected case files showed that most employers who contest citations receive substantial reductions. Doesn't this practice result in inequitable treatment for those employers who pay the full amount of the penalty without contesting it? Are the initial penalities too stiff, or the appeals process too lenient?

Answer: In FY 1980, employers were contesting the results of almost one-fourth of all OSHA inspections that yielded citations. That meant that the cited hazards, at times, remained uncorrected until the dispute was resolved in the legal process. Consequently, steps were taken to place increased emphasis on the use of informal conferences between employers and OSHA Area Directors. These conferences are intended to clarify the basis for the agency's decisions, address employer grievances, and ultimately, whenever possible, arrive at settlement agreements under which the employer agrees to comply. The result has been a dramatic drop in contested cases, from 22 percent of all OSHA inspections in FY 1980 to 11 percent in FY 1981; through February of this year, the contest rate has been seven percent. The result of this change has been immediate abatement of the hazards in question and a better atmosphere in which employers, employees and the agency can work constructively to solve their mutual problems.

Those employers who choose to contest either a citation or penalty or both are exercising a legal right. This does not result in inequitable treatment since the right to exercise this option is equally available for all employers to choose. Further the low rate of contest does not appear to suggest that either the size of the penalties or the appeals process are motivating factors in initiating employer contests.

Question: To what extent do you think employers without valid complaints are filing appeals, just because the chances are so good for reduced penalties?

Answer: OSHA has no way of prejudging the validity of employer appeals prior to a hearing on the matter. The law presumes that the employer's notice of contest is based on his belief that his position is defensible.

COST ANALYSIS

Question: After the Supreme Court's ruling on OSHA's cotton dust standard, you indicated you would substitute a "cost-effectiveness" approach for the "cost-benefit" approach. Accordingly, what type of cost-effectiveness studies are you conducting on OSHA standards?

Answer: OSHA's analyses first seek to demonstrate the existence of a significant risk. Next, they must show that the standard will reduce that risk. Third, the economic and technological feasiblity of the standard is evaluated. Finally, both the Regulatory Flexibility Act and the Executive Order 12291 require careful and systematic consideration of the economic and social consequences of the rulemakings. Therefore, once OSHA has determined the appropriate level of protection based on the three criteria outlined above, the cost-effectiveness of the various means of achieving that level of protection will be analyzed. The cost estimates are generally developed through the analysis of data obtained from OSHA-initiated industry surveys and submissions by the affected industries and other interested parties. The analyses also include estimates of the reduction in risk that would occur from the regulatory alternatives under consideration. For example, reduced risk may be achieved by requiring better worker training, more intensive medical surveillance, improved engineering controls, safer work practices or requirements for personal protective equipment. All or any combination of these approaches are evaluated as the Agency attempts to select the most cost-effective means of eliminating workplace hazards.

Question: How much is budgeted for cost-effectiveness studies in fiscal 1983?

Answer: In FY 1983, OSHA is requesting $4,394,000 for regulatory analysis. These funds for regulatory analysis encompass cost-effectiveness studies as well as regulatory flexibility statements, environmental impact statements, industry profile studies and economic and technological feasibility assessments.

PENALTY RECEIPTS

Question: What actions have been taken to improve accounting controls over OSHA penalty receipts being transmitted between OSHA offices?

Answer: OSHA has taken positive steps to improve its accounting controls over penalty receipts transmitted between area offices and the National Office. New penalty collection procedures have been promulgated that put into place OSHA's first unified debt collection system for all regions. In addition, the accounts receivable and management systems have been consolidated into one system to assure proper tracking and handling of all penalty receipts.

Question: What has OSHA done to expedite the deposit of penalty receipts into the U.S. Treasury?

Answer: OSHA has recently updated its procedures for handling penalty receipts. All area offices are required to forward penalty checks to the National Office on the same day that they are received. These receipts are transmitted to the Federal Reserve Bank on a daily basis.

MINE SAFETY AND HEALTH ADMINISTRATION

STATEMENT OF FORD B. FORD, ASSISTANT SECRETARY FOR MINE SAFETY AND HEALTH

ACCOMPANIED BY:

RICHARD L. BAKER, BUDGET OFFICER,
DIVISION OF BUDGET AND FINANCE, OFFICE OF ADMINISTRATION AND MANAGEMENT
JOSEPH A. LAMONICA, ADMINISTRATOR, COAL MINE SAFETY AND HEALTH
ROY BERNARD, ADMINISTRATOR, METAL AND NONMETAL MINE SAFETY AND HEALTH
MARY ANN WYRSCH, DIRECTOR, OFFICE OF BUDGET

SUBCOMMITTEE PROCEDURE

Senator SCHMITT. Our next group is the Mine Safety and Health Administration, represented by Ford B. Ford, Assistant Secretary for Mine Safety and Health Administration. Mr. Ford, if you would come forward.

Welcome, sir. Good to have you here. If you would introduce your associates and proceed with your opening statement.

INTRODUCTION OF ASSOCIATES

Mr. FORD. Thank you, sir. To my immediate left is Joe Lamonica, Administrator of Coal Mine Safety and Health. To his left is Roy Bernard, Administrator, Metal and Nonmetal Mine Safety and Health. To my right is Richard Baker, Chief of Budget and Finance, and Mary Ann Wyrsch, Director, Office of Budget for the Department of Labor.

If I may summarize my opening statement and have the full statement in the record.

Senator SCHMITT. I hope that you will, and then we'll have some questions for you. Please go ahead.

SUMMARY STATEMENT

Mr. FORD. Mr. Chairman and members of the subcommittee, thank you for the opportunity to appear before you. I would like to briefly outline MSHA's budget request.

MSHA is required by the Federal Mine Safety and Health Amendments Act of 1977 to conduct four annual inspections of all underground mines, two annual inspections of all surface mines, as well as additional inspections of especially gassy or hazardous mines. The Mine Act also provides for the participation of miners in promoting health and safety activities in the mines. Another feature of the Mine Act is section 115, the mandatory education and training provisions. In addition, the act requires MSHA to propose civil penalties for violations of the regulations and standards, and to provide technical assistance to mine operators. To conduct these activities during fiscal year 1983, MSHA's appropriation request totals $138.8 million and 3,408 positions. The request does not include $15 million which will allow us to finance 412 positions for the coal mine safety and health program. An amendment will be transmitted at a later date for this purpose.

The Mine Act contains all the necessary elements for MSHA to provide incentive and assistance to miners and mine operators in achieving a successful safety and health program—technical assistance, enforcement authorities, and education and training requirements. It also provides a framework for involving all segments of the mining community—management, labor, and Government—in pursuing our mutual goal of improving safety and health conditions for our Nation's miners.

MSHA has been organizationally structured around the various elements of the Mine Act. It is my belief that each organization can contribute more effectively and efficiently to promote safety and health if the tools available to MSHA were employed in a more coordinated fashion.

Therefore, I am reorganizing MSHA's field structure to place under the supervision of the district manager all the tools available to MSHA which contribute to improvements in safety and health conditions. This will involve assigning education and training specialists and the conference function to the district managers' staff. This will enhance the district managers' ability to look at the conditions and practices of mines in their particular district and to use the most appropriate mechanisms to assist in the reduction of accidents, injuries and illnesses.

These new functions will complement the enforcement activities currently in the districts. I assure you that MSHA will continue to take strong enforcement action where necessary to achieve safety and health compliance, and to encourage a continual commitment to maintaining a safe and healthy working environment. The organizational changes I have discussed represent a broadening of the role of our field managers, in recognition of the need for a comprehensive approach at the district level to the improvement of safety and health in the mines.

My objective is to improve safety and health conditions in the mines through concerted, cooperative efforts of management, labor, and Government. I believe that this comprehensive approach will allow us to target our resources and create an environment in which MSHA can have a positive impact on safety and health.

A total of $90.5 million and 2,681 positions is requested for enforcement activities in both coal and metal/nonmetal mines. These resources will provide for an estimated 31,920 regular safety and health inspections and 87,795 other inspections of the Nation's mining operations.

Surface mining of stone, clay, colloidal phosphate, and sand and gravel were excluded from MSHA's jurisdiction after December 15, 1981. However, we are requesting that this exemption not be included in the fiscal year 1983 appropriation and have adequate resources in our request to carry out the provisions of the Mine Act related to mining activities of these commodities.

The standards development program will continue its review of metal and nonmetal standards. In addition, the review of coal standards initiated in 1982 will continue in 1983.

In fiscal year 1983, a total of $2.7 million and 72 positions is requested for the assessments program. The decrease in resources in 1983 is due to the 1982 reorganization which transferred the conference function to the district management operations.

Improvements in debt collection of civil monetary penalties will continue to be stressed in 1983 to increase the effectiveness of the assessment program.

A total of $12.6 million and 110 positions is requested for educational policy and development in fiscal year 1983. The decrease in resources in 1983 is due to the 1982 reorganization which transferred education and training field functions to the district managers.

In 1983, EPD will continue to provide unified and comprehensive staff oversight on all matters related to MSHA's role in education and training activities including academy operations.

A total of $5.2 million is included for the State grants program in 1983 for 37 participating States.

A total of $18.9 million and 361 positions is requested for technical support activities in 1983.

Completion of the Dallas Pike Facility in 1983 will provide for the consolidation and more efficient operation of the approval and certification program.

A total of $14.1 million and 184 positions is requested for program administration to provide necessary staff support for efficient and economical agency management.

Also included in the 1983 request are funds for the orderly replacement of 126 MSHA-owned motor vehicles which will meet GSA standards for replacement in 1983.

Mr. Chairman, that concludes my summary statement. I will be happy to answer any questions.

REORGANIZATION AND RIF LETTER

Senator SCHMITT. Mr. Ford, I have just been handed a letter signed by you to me, as chairman of the subcommittee. It would be very helpful if these kinds of letters appeared a little bit before you appeared before this committee. That way, we can have a chance to figure out what in the world you're trying to do and then maybe ask any clarifying questions that might be required.

Mr. FORD. I regret that the letter didn't get to you sooner. It was a logistical issue to determine where all of the RIF locations would be, the number of people to be assigned to the district field offices, so that we would be sure that the information passed on to you was correct. The letter relates to the RIF resulting from the sand and gravel exemption and from the reorganization. The reorganization, as the letter states, doesn't include any reduction in personnel. It includes reassignment of personnel into field offices.

The 259 positions that will be removed from Federal services are a result of the exemption which we felt we had to move on after March 31.

Senator SCHMITT. Well, I'm just scanning the letter that it, I think, says something a little bit differently than that, that you're having to use reduction in force, according to you, reduction in force activities for both the exemption of sand and gravel, surface stone, clay, colloidal phosphate mines, as well as a reduction in force to implement the reorganization.

Mr. FORD. Mr. Chairman, the reduction in force, as a fact, is attributed to the sand and gravel exemption. The reduction in force for the reorganization is using reduction in force procedures. The Civil Service Act requires on a reorganization such as this that positions be eliminated and reestablished in other offices in the districts.

One is procedure, the other is fact.

RESCISSION PROPOSAL

Senator SCHMITT. Well, we'll review the letter and I'm sure that we'll have questions for you about it.

If Congress fails to act on your proposal to rescind $2 million which is no longer needed due to the transfer of sand and gravel activities to OSHA, how will you utilize this money?

Mr. FORD. There was a request for a reduction in the rescission of $2 million by the President for the use of those funds to lift a freeze on hiring of coal mine inspectors and to initiate additional hiring to achieve an additional 412 positions in coal mine safety and health.

EFFECTS ON PERSONNEL INVOLVED IN SAND AND GRAVEL ACTIVITY

Senator SCHMITT. Will those persons affected by the sand and gravel reduction in force have access to those positions if they are, in fact, qualified?

Mr. FORD. If they are qualified, yes, sir. We are making a review of all of their qualifications now to accommodate as many as we can.

Senator SCHMITT. Can that be an internal transfer without recompeting?

Mr. FORD. If they are qualified, they can be hired. I have the understanding that they can be hired directly or transferred into those positions.

Senator SCHMITT. I don't know that it's contained in your letter, but could you give us an estimate of the number of the sand and gravel inspectors that may qualify for rehiring in this buildup of the mine inspectors?

Mr. FORD. The RIF procedure has to run through its total course first and then displaced employees are identified for the possibility of transfer into coal. But the RIF procedure has to settle out first.

Senator SCHMITT. Assuming sand and gravel was still one of your responsibilities, an inspector can't transfer from one organization to the other?

Mr. FORD. Not currently until, under this procedure, the RIF is completed. There are approximately 50 positions in coal mine safety and health that are affected by bumping of sand and gravel personnel. Once the entire RIF process has ended we will identify the people who we will bring on board.

Senator SCHMITT. I see. Since the Congress has not acted on the rescission proposal, do you intend to send a reprograming request to utilize that $2 million elsewhere?

Mr. FORD. We are communicating with the Office of Management and Budget now on that issue.

Senator SCHMITT. I think the Congress has to act by tomorrow or the rescission is automatically rejected. My guess is that we're not going to act by tomorrow. We will look forward to your further communication on that issue.

Mr. FORD. Yes, sir.

MSHA REORGANIZATION

Senator SCHMITT. You have indicated in your opening statement that you are reorganizing the field structure of the Mine Safety and Health Administration. Would you elaborate on the philosophy behind the MSHA reorganization?

Mr. FORD. Yes, Mr. Chairman. The reorganization will provide the district managers with all of the tools currently under the authority of the Mine Safety and Health Administration that can be used to effectively and efficiently reduce mine accidents and injuries. Since the district manager is the chief enforcement officer, the addition of education and training responsibilities and the conference responsibilities will complete and complement the health and safety tools needed by district managers to function as primary health and safety managers.

The current organization is vertical—education and training, coal, metal and nonmetal, and the assessments conference program all operate under separate administrators or directors.

All of them were doing their job very well, but coordination between the three was difficult because of the different priorities established within each of the structures. Under the reorganization, if a district manager sees a problem in a mine he can prescribe the type of assistance directly to the mine on his own priority basis. We anticipate that this will be extremely beneficial. This will also encourage better communications between miners and mine operators, where those communications are not appropriate for health and safety purposes to work with the miners and mine operators through the safety specialists, without the potential of citations, unless there's an imminent hazard, obviously, and to improve that type of communication and commitment.

REORGANIZATION STATUS

Senator SCHMITT. What is the status of implementing this reorganization?

Mr. FORD. It's in process now.

Senator SCHMITT. What does that mean?

Mr. FORD. Notices have been issued to all of the employees who are affected. The reorganization and the RIF for sand and gravel are proceeding concurrently to eliminate future disruption of employees and become effective by the end of May.

PENALTY ASSESSMENTS UNDER THE REORGANIZATION

Senator SCHMITT. Now the district managers having responsibility for followup conferences, should that reduce the frequency for which penalties must be assessed for violations?

Mr. FORD. It should not. We are currently considering modification of the penalty regulations. At the time of the inspection, the inspector will make his/her determinations and will so note on a revised inspector's form. At the closeout conference, the inspector will provide the operator with his/her statement and evaluation of the inspection event along with the reason for the degree of the citation to be issued. The operator should fully understand at the inspector closeout conference the rationale of the inspector's evaluation. The operator may also provide additional information to clarify and/or refute the inspector's evaluation of the company's good faith, negligence, et cetera, and the citation issued which can also be changed at this time.

If the mine operator is still dissatisfied with the inspector's determination, he may ask for a conference with the district management—whether that's a district manager, subdistrict manager, or field office supervisor, to carry his concerns to the district manager.

An assessment will not be made until after the informal conference with the district manager, to allow a full airing of the circumstances. This does not preclude an additional appeal if the operator wishes to go beyond the district manager. But once a determination is made on the severity on the negligence, good faith, the other aspects that have to be considered on the significant and substantial violations in particular, then, and only then, will the documentation go to the central assessment processing office in Wilkes-Barre, where the assessment will be made and the proposed civil penalty will be forwarded to the district and to the mine operator.

The mine operator will then know the amount of his civil penalty.

INSPECTOR DUTIES AFTER REORGANIZATION

Senator SCHMITT. What will be the effect, if any, on inspectors by this reorganization? Does it in any way inhibit or delay their ability to fully carry out their duties?

Mr. FORD. No, sir. The inspectors will still have the responsibility to complete their inspections as required in the past. The only additional responsibilities will be to determine whether a miner has been appropriately trained and so forth, and whether the training plan is appropriate for that particular mine. They'll pass this information on to the field office supervisor who will send the safety specialist to the mine to take care of any particular problems. We see this as a tandem type of operation.

Senator SCHMITT. Do you understand why, in testimony before the House Manpower and Housing Subcommittee, in February, a coal mine inspector argued that with this transfer of authority, the ultimate responsibility for issuing citations and penalties shifts one step closer to the inspector himself?

Mr. FORD. No, sir. I think at that time, in February, the entire program had not been communicated to the field as intensively as it has recently.

RECENT UNDERGROUND COAL MINE DISASTERS

Senator SCHMITT. We recently had a series of mine disasters in underground coal mines. Were these all relatively small operators?

Mr. FORD. Relatively, I would say, yes.

Senator SCHMITT. What was the inspection history of these mines?

Mr. FORD. Each mine had received all of their mandated inspections and several spot inspections.

Senator SCHMITT. Mandated is four a year?

Mr. FORD. Four a year, that's correct, for underground mines, and these were. Plus numerous other spot inspections.

Senator SCHMITT. What was the reason for those numerous other spot inspections?

Mr. FORD. Ventilation, electrical, and specialized types of inspections.

Senator SCHMITT. But they were problems that had been identified in the mandatory inspections that were being followed up on?

Mr. FORD. Special emphasis program on electrical, on ventilation, on roof control is a constant, ongoing activity within each of the districts. As they identify the mines and the type of problems, they continue making these special inspections.

Senator SCHMITT. Well, do you feel that frequent inspections are making any difference, then, since these are mines that seem to have had their full complement, plus some?

Mr. FORD. The inspections obviously must be continued and do have an impact. I feel that the reorganization is going to address the other part of the obvious problem, and that's the continual commitment around the clock by miners and mine operators to work safely all the time. And that appeared to be the problem in these mines.

PREVENTING MINE DISASTERS

Senator SCHMITT. Well, do you feel that we're making any progress at all in this business of preventing mine disasters?

Mr. FORD. Yes, sir, I do. The incident rate for all nonfatal days lost to accidents has been going down. In coal mine safety and health, the incident rate for 200,000 hours worked was down 13 percent from the previous year. The three disasters during 1981 accounted for 36 deaths. These disasters are sad and tragic, but the incident rate has been going down both in metal and nonmetal and in coal, indicating safety improvement.

Senator SCHMITT. So you're getting your incident rate down, but there are incidents continuing that raise the fatality count to significantly high levels.

Mr. FORD. Yes. Obviously, the tragic loss of a number of people at a single incident is tremendous publicity. But the ones that no less cause us problems are those that are singles and doubles, that happen during the year that add up to the greatest number of fatalities, more than those that are lost in major incidents.

Joe Lamonica in Coal Mine Safety and Health has another special emphasis program going now on roof falls, which, historically, have been the largest problem for fatalities.

FISCAL YEAR 1981 FATALITIES

Senator SCHMITT. What were the total fatalities for 1981?

Mr. FORD. There were 155 in coal mine safety and health.

Senator SCHMITT. Yes; 35 of which were in those three particularly large accidents.

Mr. FORD. Yes.

Senator SCHMITT. What were the total fatalities in noncoal mines?

Mr. FORD. Eighty-four, which was the first time in this century that they have come down below 100. We're very encouraged by that.

Senator SCHMITT. Is that because of the closures of underground mines?

Mr. FORD. As we all know, the metal and nonmetal industry has been soft. But the incident rate, which is based upon 200,000 man-hours worked, was also down.

Senator SCHMITT. How are surface mines doing?

[The information follows:]

METAL/NONMETAL SURFACE MINE FATALITIES

Of the 84 fatalities occurring in metal and nonmetal mines in 1981, 53 occurred in surface mining operations. The incidence for fatal and nonfatal injuries has been declining in the past few years in metal and nonmetal mining operations—both underground and surface.

ANNUAL INSPECTIONS

Senator SCHMITT. Do you feel that we're overemphasizing the safe mines and underemphasizing those that have a record of incidents?

Mr. FORD. I think there is some of that. In fact, we're discussing certain proposals now that we'd like industry and labor and others to continue to discuss, the possibility of permitting some flexibility on inspections of surface mines, rather than the mandated two. Some of them may require more. Some may require less based upon certain things, such as incident rates, the type of activity, and the size of the work force and its safety history.

We are emphasizing in the reorganization and in our communications to our inspectors concentration on the historically hazardous circumstances in mines in various locations. Different geographical areas have different problems. For instance, shooting off the solid is unique to a certain area of the United States. We're putting special emphasis in that area right now.

Senator SCHMITT. It's my understanding that in some mines, even those with good safety records, the so-called four inspections per year take essentially the whole year. Is that true?

Mr. FORD. In some of the very large mines, we have a resident inspection program. An inspector is there and is making the regular inspections, some of which take a quarter of a year.

Senator SCHMITT. Have you evaluated whether that is really efficient, those really are efficient inspections, or are we just getting a continuous involvement in the activities of the mines by MSHA?

Mr. FORD. I believe they are making efficient inspections. We feel that the underground four inspections are necessary for underground mines, those being the most hazardous types of operations.

Senator SCHMITT. Yes; but are they necessary in mines that have a strong safety record? Wouldn't it be better to concentrate on those, as the Congress has indicated it would like for you to do, that are most hazardous?

Mr. FORD. Well, some of the mines that have a much better safety condition would take less time to inspect during their full inspection, I presume.

[Mr. Lamonica nods in the negative.]

INCIDENT RATES

Senator SCHMITT. Your statistics show that for several categories of mining, including underground coal mining, the loss fatality rates in 1980 occurred in mines with the largest numbers of workers. Does that also hold for the incident rate?

Mr. FORD. All that we have, I am advised, is the incident rates for all mines, for the total work force, rather than broken down according to the individual mines.

Senator SCHMITT. Well, surely the data must come in as it's broken down according to the individual mine.

Mr. FORD. Could I have Mr. Lamonica comment on that, please?

Senator SCHMITT. Yes, please do.

Mr. LAMONICA. Mr. Chairman, we have the data for each individual mine in terms of its incident rate. I don't have available an incident rate for large mines or small mines.

Senator SCHMITT. Could you supply that for the record, please?

Mr. LAMONICA. Yes, sir.

[The information follows:]

Surface Coal Mines

Mine Employees	Fatalities 1979	Fatalities 1980	Fatalities 1981	All Injuries 1979	All Injuries 1980	All Injuries 1981	Nonfatal Days Lost Rate 1979	Nonfatal Days Lost Rate 1980	Nonfatal Days Lost Rate 1981	Fatality Rates 1979	Fatality Rates 1980	Fatality Rates 1981
1-4	0	4	3	18	37	31	6.60	7.05	3.50	0	.46	.34
5-9	0	1	1	96	98	53	7.57	7.85	2.11	0	.04	.04
10-19	5	4	4	300	287	165	8.15	7.35	2.68	.07	.06	.07
20-34	1	5	2	584	473	289	11.34	10.63	3.31	.01	.06	.03
35-49	1	1	3	354	271	242	11.55	10.34	3.60	.02	.02	.05
50-99	1	0	3	692	590	398	13.07	13.20	3.94	.01	0	.03
100-149	0	1	1	348	306	282	11.97	13.29	4.63	0	.02	.02
150-249	4	4	3	462	410	238	11.59	11.78	3.23	.05	.05	.04
250 or more	3	3	4	742	838	614	12.24	12.77	3.35	.02	.02	.03
Total/Average	15	23	24	3,516	3,310	2,312	11.88	12.13	3.46	.02	.03	.04

Underground Coal Mines

Mine Employees	Fatalities 1979	Fatalities 1980	Fatalities 1981	All Injuries 1979	All Injuries 1980	All Injuries 1981	Nonfatal Days Lost Rate 1979	Nonfatal Days Lost Rate 1980	Nonfatal Days Lost Rate 1981	Fatality Rates 1979	Fatality Rates 1980	Fatality Rates 1981
1-4	1	7	8	18	25	13	6.60	7.05	5.23	.51	3.29	3.22
5-9	5	3	3	121	141	93	7.57	7.85	7.96	.39	.22	.26
10-19	15	8	17	683	575	413	8.15	7.35	6.88	.25	.13	.28
20-34	17	7	16	928	1,034	613	11.34	10.63	9.34	.27	.09	.24
35-49	4	3	3	689	623	489	11.55	10.34	9.25	.08	.06	.06
50-99	11	12	24	1,931	1,735	1,311	13.07	13.20	12.22	.09	.10	.23
100-149	13	14	25	1,593	1,708	1,286	11.97	13.29	12.16	.11	.12	.24
150-249	17	16	11	2,565	2,755	1,819	11.59	11.78	10.22	.09	.08	.07
250 or more	32	32	15	9,509	8,971	5,900	12.24	12.77	10.84	.05	.05	.03
Total/Average	115	102	122	18,037	17,567	11,937	11.88	12.13	10.58	.09	.08	.11

Senator SCHMITT. But do you agree that your data shows that the fatality rates are lowest in the mines with the largest number of workers?

Mr. FORD. We can provide you a summary responding to that when we provide the information.

[The information follows:]

COMPARISON OF ACCIDENT FREQUENCY RATES

It is difficult to compare one mine to another because of differing conditions.

One accident at a small mine has a much more dramatic impact on the accident frequency rate than it does at a large mine.

TARGET INSPECTIONS

Senator SCHMITT. That's our information and it tends to support the committee and, in fact, the Congress' suggestions to you that you target inspections in the high hazard, smaller mine areas to try to avoid some of these things that we've had in the past.

Now when you say target inspections, that, of course, assumes they're good inspections and it sounds like you're even having problems there if you can inspect a mine as much as you do and still have a major accident.

Mr. FORD. Again, I feel that it's going to take a combination of enforcement and education and training. But I am aware of excellent safety programs in large mines and that, generally, you find strong safety committees where labor and management work carefully and closely together.

Senator SCHMITT. Well, the information we have from your agency suggests that the incident rates more or less parallel the fatalities. That is, that they correlate inversely with the size of the mine.

Do you think the Government is overregulating the mining industry?

REGULATORY REFORM

Mr. FORD. I am committed to regulatory reform. At the present time, we are reviewing a large number of the metal, nonmetal standards, inviting public comment. The public announcement was to eliminate those that assisted little in health and safety, that were obsolete and overlapping. Next other standards will be examined to determine if they're necessary, if they're not unduly burdensome on industry and if they maintain the health and safety that is required.

Then we're going to examine the coal standards in the same way. Rather than questioning overregulation, I think it's the manner in which they are implemented. It's extremely important to see what will filter out and be eliminated and what's left and how they're to be implemented.

EFFORT TO AUTOMATE UNDERGROUND COAL MINING

Senator SCHMITT. Are you aware of the level of effort the Department of Interior, the Bureau of Mines is putting forth in trying to automate underground coal mining?

Mr. FORD. Pardon me, I missed that, Senator.

Senator SCHMITT. Are you aware of the level of effort in the Department of the Interior aimed at automation of underground coal mining, advancing the state of the art so that there can be fewer miners in the mine?

Mr. FORD. I am not specifically aware. I know of recent advances that certainly do accomplish that. Long-haul mining is a major technological change, auger mining, continuous mining. But I am not aware of any specifics that would remove the presence of miners in the underground mines.

Senator SCHMITT. That would certainly solve the safety problem, wouldn't it?

Mr. FORD. Yes, sir.

FISCAL YEAR 1983 BUDGET AMENDMENT

Senator SCHMITT. In February, the administration announced its intention to submit a fiscal 1983 budget amendment to increase MSHA funding for coal inspections by $15 million over and above the existing request of $60 million. Should we expect to see this amendment formally transmitted to the Congress?

Mr. FORD. I would expect that soon. It was a commitment on the part of the President and I'm certain that it will be before Congress in the near future. The Office of Management and Budget is devising it to my understanding.

Senator SCHMITT. What is the reason for the additional request?

Mr. FORD. The additional funds are to provide additional insurance, to attack the problems that have been identified in the recent disasters. There will be additional coal mine inspectors that will bring the inspectorate up to its historical high—approximately 1,004. The other personnel will be support personnel for this purpose.

There has been considerable unbalanced attrition in a number of coal mine safety and health districts. For the most part, this will be remedied through additional hires.

This will also insure that the mandatory inspections are made as well as additional spot inspections which appear to have a considerable amount of benefit and can be accomplished with assistance from the education and training people.

Senator SCHMITT. Would you expect that to make the level of inspections approach the 1981 level?

Mr. FORD. That would bring it above that.

EFFECT OF BUDGET AMENDMENT ON INSPECTIONS

Senator SCHMITT. Well, there still seems to me to be some conflict here between the funding emphasis on numbers of inspections and the continued problem that we're having within the coal mines themselves. As I indicated last year, it may not be the number of inspections that is the problem. It may well be that we're just not doing it right.

Mr. FORD. I would say the proposal out of the reorganization is to more effectively use all of the personnel working together to get to the particular problem. The particular problem, I'm convinced, as you are, is in the commitment to health and safety when the inspector isn't there. The increased funds will increase the quality of the inspections as they are being conducted.

Senator SCHMITT. Well, would you explain that to me? How does the additional money change the quality? Are you going to pay more, get better inspectors, or what?

Mr. FORD. I'll let Mr. Lamonica answer that.

Mr. LAMONICA. Sir, we have lost quite a few inspectors through attrition over the last year. The idea is that the emphasis has to be placed on the quality of inspection as opposed to just the fact that the inspector conducted an inspection.

Senator SCHMITT. But what does that mean? What does quality mean?

Mr. LAMONICA. Quality?

Senator SCHMITT. Yes.

Mr. LAMONICA. Well, what we're seeking is the results of the inspection——

Senator SCHMITT. Are you saying that instead of going through the mine and just checking off stuff without looking, that somehow or another, more money is going to make the inspector look?

Mr. LAMONICA. No. The idea is that the number of mines per inspector, being able to cover all mines——

AUGMENTING EDUCATION AND TRAINING

Senator SCHMITT. Yes; but you are still talking about numbers, not quality. You're talking about numbers of inspections. And the evidence is that numbers of inspections haven't solved the problem. In fact, the evidence is that it isn't even helping the problem now. When you talk about quality, I think you're still thinking numbers, and that's what I'm trying to get at.

Why wouldn't this money be better spent in augmenting the training programs, the management-labor joint safety programs, the emergency team programs, of getting far better automatic monitoring systems within the mines, where you really have an ongoing commitment to safety instead of a bunch of people going around trying to increase the numbers of mines they inspect and the numbers of times they inspect them?

Mr. FORD. Part of it is for that purpose, sir.

Senator SCHMITT. Well, but that isn't what you said, and every time I ask this question, I get numbers. I get that you're going to do more of what you've been doing, but what you've been doing doesn't seem to work.

Mr. FORD. Well, the transfer of all the education and training people to the district level increases the amount of resources that the district manager has for that purpose. The education and training people will be that thrust that you're speaking of, which I agree with tremendously. That's where we're going to put our emphasis.

Senator SCHMITT. Yes; but every time I personally try to get this kind of emphasis clearly defined and get you moving in that direction, your agency and organized labor and, to some degree, management, come in and say that you're against safety. Well, what's being done right now isn't working. What I'm for is getting something that works.

Mr. FORD. I agree with you.

Senator SCHMITT. And all I get here is a suggestion, a request for $15 million so that you can increase the number of inspections. And now you qualify that remark in response to my question and say, oh, well, we're going to work on safety and other programs, on training and other programs, too. But the mentality, the mindset, as my friends in DOD say, doesn't seem to be in that direction. You seem to be trying to fill squares by a whole bunch of inspections out there and you're still killing off miners. Not you; I'm sorry. But the system is.

Mr. FORD. Well, I want to assure you, sir, that my intention under the reorganization is to recognize that enforcement is an important tool, but it's not the only tool for doing the job, as you say. To do the job appropriately, we have to have the coordination of education and training at the minesite all the time. That's the thrust of the total reorganization.

Senator SCHMITT. Why shouldn't that $15 million supplemental request, if and when it comes, be totally allocated to training and to the development of labor-management team concepts within the mines?

Mr. FORD. It's a commitment from the administration that there be an increase to the historical high of the inspectorate.

Senator SCHMITT. Which hasn't solved the problem. That's what I'm getting at. Why should we have that kind of commitment if you haven't solved the problem?

Mr. FORD. There has been a reduction in incident rates which could just as well have been fatalities, those accidents that did occur. The fact that the nonfatal loss-day rate still bounces along on a level shows that something else has to be done to get that curve to go down at a steeper rate.

INSPECTIONS AND INCIDENT RATES

Senator SCHMITT. You're right. But your incident rates may well reflect your training programs. It may not have anything to do with inspections. Nobody has ever showed me that inspections have anything to do with incident rates. They may; they may not. I haven't seen anybody make that argument.

Mr. FORD. That's difficult to quantify.

Senator SCHMITT. You're darn right. And all that we can look at is that, at least in the fatality area, which is certainly the most serious area to look at, the number of inspections doesn't seem to be making a heck of a lot of difference these days.

Mr. FORD. There was a general reduction until these unfortunate incidents this past year.

Senator SCHMITT. Well, that's right. That's the problem. It only takes one unfortunate incident, unfortunately, to raise that fatality rate awfully high, and that's what we're trying to avoid. And particularly if we are going to start to see an even greater emphasis on coal mining to supply this Nation's energy needs. We'd better have this thing under control before we see that upswing. I don't know how that's finally going to work out.

Mr. FORD. We hope to be able to evaluate what the thrust of our program is next year, based upon the reorganization.

Senator SCHMITT. Senator Specter, welcome.

Senator SPECTER. Thank you, Senator Schmitt. Nice to be here.

Senator SCHMITT. Would you like to ask a few questions, sir?

CAUSAL RELATIONSHIP BETWEEN INSPECTIONS AND ACCIDENTS

Senator SPECTER. Yes; I regret that I could not be here earlier, but I know that it's a subject that I need not dwell on, given the general knowledge of the conflicting schedules which we have.

The subject of my paramount concern is the one that you've been talking about. We may be replowing some ground, which, if we did, it would not be the first time that that's been done in the U.S. Senate.

But the question is, What level of funding is necessary to do an adequate job on inspections? I have heard the distinguished chairman of this subcommittee focus on the difficulty in establishing a causal connection between the absence of inspections and accidents. That may be because it is always so difficult to establish any causal connection as a legal matter.

I know that fatalities were up last year and I'm advised that there are 44 deaths this year, which is a significant increase over last year. That leads to the question of whether you believe that that has any relationship to a reduction in funding for inspectors?

Mr. FORD. I have found no relationship to the reduction in funding related to those accidents that caused the multiple fatalities and resulted in the majority of those unfortunate deaths.

Senator SCHMITT. If the Senator would yield, Mr. Ford testified earlier that in each of the mines, in which there have been recent accidents, they had their four mandatory inspections, plus quite a number of spot inspections. That's why I'm asking the same questions you're asking.

Senator SPECTER. Did the 44 deaths occur from a limited number of accidents?

Mr. FORD. Yes; this year, we had one major accident that took eight lives. The remainder had been in single and double fatalities. We had a number of roof-fall accidents at one time in four districts, and then concentrated efforts there to see why and to get the type of inspector visits in those districts.

ACCIDENT INVESTIGATIONS AND DETERMINATIONS

Senator SPECTER. Well, you're saying that of the 44 fatalities, 36 occurred with either 1 or 2 at a time and 8 occurred on one accident. Were you able to identify the cause of these incidents?

Mr. FORD. Yes; there was a followup investigation and determination made after each one of the accidents.

Senator SPECTER. And what was the cause of the incident which claimed eight lives?

Mr. FORD. We will have the final report at the end of the month. Our preliminary determination is that it was improper use of explosives and improper rock dusting.

SAFETY CHECKS ON USE OF EXPLOSIVES

Senator SPECTER. Improper use of explosives and improper rock dusting. What kind of a check is made by a governmental agency, if any, on use of explosives? What standards are there for use of explosives?

Mr. FORD. There are permissible requirements. There are requirements for permissible use of permissible explosives, which are made known to the mine operators, and the miners are aware of those requirements. The inspector, when he's at the mine, if an operation is going forward, will observe the cycle. And if he sees nothing wrong, then there is no citation.

Senator SPECTER. Well, what is the practice with respect to what MSHA will do about checking to see if a given mine knows how to operate explosives?

Mr. FORD. For an example, shooting from the solid in December resulted in an explosion that took many miners' lives. Coal Mine Safety and Health put a special emphasis on an education and training program on the permissible use of permissible explosives in shooting off the solid.

Just 2 working days before the last mine blew up, those individuals who were involved in the blast went through that training program.

Senator SCHMITT. Excuse me. Mr. Ford. Would you just say in one or two sentences for our record, for others who may read it, what shooting from the solid means?

Mr. FORD. That is drilling the holes without cutting at the base or top or center. There is no cutting involved. It's the drilling, loading, stemming, and shooting.

Senator SCHMITT. When you say cutting, there's no undercutting or overcutting prior to the shot.

Mr. FORD. That's correct.

Senator SCHMITT. And the effect of that is——

Mr. FORD. It can be done safely.

Senator SCHMITT. No; but what is the effect in the cases where there have been these explosions?

Mr. FORD. Could I have Mr. Lamonica respond?

Senator SCHMITT. Surely. I presume that there is less absorption of the explosive energy in the rock itself; is that correct?

Mr. LAMONICA. Sir, in the case that Mr. Ford cited that happened in December, they drilled several holes, usually about seven to nine holes, and loaded them with explosives and stemmed it. There was a lack of stemming material, which confines the shot. One of the holes didn't pull and put an overload on the adjacent hole. Each hole was fired in a delayed sequence and one of the holes blew out because of the one hole pull, putting flame out into the environment, which ignited dust that had been raised in suspension because of the previous shots and caused the explosion.

Senator SCHMITT. Thank you. I think that that will clarify it for everyone. Excuse me, Senator. You may know what shooting from the solid was, but I had forgotten.

Senator SPECTER. Well, you may think that that clarified it for me. [Laughter.]

Did you trace back and find out whether the MSHA inspectors had failed to give the adequate instruction or whether the mine blasters had failed to carry out the instructions?

Mr. LAMONICA. Sir, it's my understanding that the person who sets off the charge is called a shot-firer, that the shot-firers were certified. The mine operator had a training plan in effect. It's my understanding that the training plan was complied with.

As Mr. Ford indicated, a special emphasis program was conducted by both MSHA and the State of Kentucky on the hazards of shooting off the solid and the importance of following safe practices. The individuals involved in this particular explosion had attended that training, but the incident still occurred.

ACCIDENT DETERMINATIONS

Senator SPECTER. Are you saying that it's nobody's fault? But it happened. Analytically, something went wrong.

Mr. LAMONICA. Our investigation, which was a very thorough investigation, attempts to determine the cause from reconstruction of the facts as we know them. But, unfortunately, there were no eyewitnesses, so we are trying to reconstruct the event based on the facts and evidence that was at the site. Our best theory of what occurred is essentially what I had said previously.

Senator SPECTER. I can understand and I think you put it very well and very candidly and I appreciate it. You're giving us your best theory. The difficulty of investigation is that we simply cannot pin down what is the cause. It's just too hard to do. But that is not to say that if more resources were spent, if there had been more training or more supervision, we might not have avoided the incident. That is equally not to say that if you had developed or devoted the resources, that you would have prevented it. You just don't know.

We do not have the time, nor, I suspect, you have the records, to go through the other 36 incidents of fatalities, where there are 20 or 22 or however many incidents that cost those lives, and analyze them to make a determination as to what was the cause. And without doing it piece by piece, I would find it hard to accept as a matter of proof that you could say that more inspectors would not solve the problem, that at least one of those incidents was probably caused by the absence of an inspection or by the absence of a reasonably thorough inspection. It's very hard to say that, to pin it down in a causal connection way.

So the absence of a causal connection—I spent a lot of time as a lawyer and as an investigator on working on all these matters. I know how difficult it is to prove them. So the absence of the cause and effect relationship doesn't persuade me that it might not have been avoided with more investigators or with more inspections.

That doesn't persuade you that more inspectors would not have possibly prevented some of those fatalities?

Mr. LAMONICA. There's the aspect of the inspection of the mine, the thoroughness of the inspection. I guess one could raise a question about the quality of the training, the effectiveness of the training. I see a multitude of things there, the commitment of the mine management to safe practices. I just see a multitude of factors that we in the health and safety business have to address when we are confronted with these types of situations.

Senator SPECTER. So you can't possibly say that you couldn't have done a better job.

Mr. LAMONICA. I can't say that based on what you've presented.

Senator SPECTER. So it's always possible to do a better job. It's a question of the appropriate use of resources and how much money is to be put in. The concern that I have sensed is that the cuts have been too deep on the inspectors. I haven't taken the time, I haven't discussed with the chairman—I went to the Emerald Mine in Green County and went into a mine shaft. That happens to be an extraordinarily well operated mine by Amaco in Indiana. And I had in one case gone into a mine in Colorado years ago in connection with the practice of law. This is the second time that I was underground. It is an eerie thing to go several miles underground. There are a lot of things that can go wrong.

I went into a anthracite coal operation near Hazelton and went up a large incline on some equipment that looked like it had been there 80 years. The vibration was so intense that it was hard to hold on to the ladder going up, the most rudimentary types of equipment.

But I know that you've had to cut down on inspections, or at least I presume—you have had to, haven't you, as a result of the reduction of inspectors?

Mr. LAMONICA. The reductions that we have encountered have been the result of attrition, a hiring freeze that has been in effect basically since 1978, I believe.

FISCAL YEAR 1981-83 FUNDING LEVELS

Senator SPECTER. Well, how much were the cuts last year in Federal funding for inspectors? Weren't they something like $48 million?

Mr. FORD. The only cut that the Mine Safety and Health Administration took was 4 percent with the continuing resolution December 15.

Senator SPECTER. What is the administration's budget for fiscal year 1983?

Mr. FORD. The request is for $138.8 million, which does not include the $15 million that is to be sent forward by OMB, which will bring it to $154 million.

Senator SPECTER. And what is the figure currently in effect on an annual basis?

Mr. FORD. In coal?

Senator SPECTER. Well, comparable to the $154 million that you just gave me.

Mr. FORD. The current budget is $148,038,000. The $138 million was proposed prior to the President's determination to request an additional $15 million. So there will be a reduction in the rest of the agency and an increase in coal mine safety and health.

Senator SPECTER. Well, are you saying that in the current fiscal year, we're spending about $154 million and fiscal year 1983 is projected to be $148 million?

Mr. FORD. The current fiscal year figure is approximately $148 million and 1983 will be, with the $15 million, should Congress adopt that as well, $154 million. It would be an increase but the majority of the increase goes to coal mine safety and health. There is a request to increase approximately $1,965,000 in the event that Congress returns sand and gravel operations, rock products, to MSHA's jurisdiction.

Senator SPECTER. Do you think they should?

Mr. FORD. It has been the administration's position not to support the transfer to OSHA. We do feel that it's a health and safety issue.

Senator SPECTER. Is the projected 1,004 coal mine inspector force sufficient to conduct the full four annual underground mine inspections and two surface mine inspections?

Mr. FORD. Yes.

INSPECTOR WORK FORCE

Senator SPECTER. The United Mine Workers testified, according to information provided to me, that 1,500 coal mine inspectors are necessary to do the job. Do you disagree with that figure?

Mr. FORD. We feel that 1,004 coal mine inspectors will be sufficient for our needs to do the job appropriately.

Senator SPECTER. And how much time does that give those inspectors to spend on each one of those inspections, on the average, if you know?

Mr. FORD. As was brought out earlier, in some mines, there's a constant inspection because of the size of the mine or the gassy nature of the mine. Other mines may take 3 days. It depends upon the size of the mine.

Senator SPECTER. Do you oppose the idea of cutting underground mine inspections from four times to two times a year?

Mr. FORD. We do feel that four undergrounds are necessary in underground mining. Four inspections annually for underground mines should be the norm.

SAND AND GRAVEL TRANSFER TO OSHA

Senator SPECTER. Have the inspection responsibilities been transferred from MSHA to OSHA on sand and gravel operations?

Mr. FORD. Yes, they have.

Senator SPECTER. Do you have a judgment as to how efficient those inspections have been under OSHA as contrasted with what has been done under MSHA?

Mr. FORD. I am aware that there have been less inspections. I do not know how many. I know we were conforming to the greatest extent to the mandatory inspections prior to the transfer.

Senator SPECTER. Sorry, I didn't follow that last part.

Mr. FORD. Two inspections a year per mine are mandatory. I do not know how many inspections have been given by OSHA since the transfer.

Senator SPECTER. Do you know what the statistics are comparatively on accidents and fatalities for a comparable period when MSHA had inspection obligations?

Mr. FORD. We are not processing those reports because we are prevented from administering any of the activities in the exempted categories. So the information that has come in since the transfer would not be complete.

Senator SPECTER. How long has the transfer been in effect?

Mr. FORD. Since December 16 of last year.

Senator SPECTER. Was that the day of the continuing resolution? The last day. Mr. Chairman, thank you very much. I very much appreciate the Chair's courtesy.

Senator SCHMITT. Thank you, Senator. We hope that we can work this out. I know of your concern and the concern of just about everybody on this committee that has any coal mine or mining activities in their State to try to come to grips with this problem. I'm glad to see that the administration is concerned with their $15 million additional request. My only question is whether they're planning to put it in the right place?

As you know, I see no strong evidence that inspections will solve the problem. I'm wondering if that $15 million, or a significant part of it, shouldn't be directed at the kinds of safety education that apparently didn't take in the disaster that we discussed. And maybe some more emphasis there would solve the problem. We'll just have to talk this out and work with the administration and see what we can come up with.

ACCIDENT ANALYSES

Senator SPECTER. One thing that I would like to question and I think it would be worth your time, and I would certainly like to see the analysis. I would like to see an analysis of the number of accidents that occurred, and it should be a manageable number. Say on the 44 fatalities, it should be somewhere in the 20's, perhaps, on accidents. I would like to know what the investigation showed as the cause and whether there was something that could have been done to prevent what type of activity might have prevented.

Mr. FORD. An investigation is conducted of each fatality. The investigative report includes the causes and recommendations for future preventive actions. These reports are distributed to the mining industry.

Senator SPECTER. I have a sense if this were a tough litigation issue and if it were treated with a lot of depositions and a lot of discovery and a lot of document production, that, Mr. Chairman, we would find that the inspection issue was relevant.

Senator SCHMITT. You may be correct. I suspect that you are correct in some instances. How many, I don't know. But I also suspect you would find that nature was the cause in some cases or a lack of information about nature may have been the cause.

For example, in the roof falls, they may have entered a highly fractured zone that they didn't know about and they roofed according to standard procedure or bolted according to standard procedure and it just didn't take.

Now if you want to talk theoretically, there are ways to predict where your fracture zones are if you put in the resources necessary to do it. I know that there are some very, very interesting new concepts for low-frequency radio communications to be used for an emergency basis in the mines. They're being tested in a number of localities right now. There's a system being produced by a small company in Raton, N. Mex., near one of the major coal mining areas in New Mexico, that holds promise of giving additional information, a radiogram, if you will, of the nature of the rock ahead and above the area of transmission.

There are a lot of these kinds of things that are theoretically possible. Technology and science combined offer tremendous opportunity. But we are not making those kinds of investments. And when you look at what we are doing in the real world of where we are out there, my guess is that you're going to find that there's a rational explanation for each accident, but more often than not, it has to do with things that either couldn't have been prevented, or it was just carelessness, that people took a shortcut, they tried to get away with something, and they didn't get away with it.

Senator SPECTER. Well, what you said, Mr. Chairman, persuades me that the scientists and technologists can give us the insights. The geologists can provide answers. It's the lawyers who don't follow up on them.

Senator SCHMITT. To some degree, that's true. But I don't want you to——

Senator SPECTER. The chairman is a geologist and I'm the lawyer.

Senator SCHMITT. I don't want to degrade your particular side of the legal profession unnecessarily. Let me tell you that when I was director of NASA's energy research and development programs, this is a problem, and this was back in 1974—that shows you how long I've been worried about this problem—we felt that a cooperative program between the Department of the Interior and NASA, taking the new technologies and new scientific understanding of that time into the underground mine environment would, in fact, allow us to leapfrog the current technologies and move a large proportion of the miners out of many of the large underground coal mining operations.

We went to the Bureau of Mines. The then Director and I worked out a beautiful technical plan with all the milestones you could want and very efficient use of funding and everything like that. We were ready to go.

We took it to the lawyers, the patent lawyers, and for 1 year, the Department of the Interior and the NASA lawyers fought over patent and background rights and we never consummated the agreement. And that's why I hope the Senator will help me get a new patent policy bill through the Senate, which has been reported out of committee. [Laughter.]

We finally got it reported out of the Commerce Committee and we're going to make some progress one of these days.

Senator SPECTER. We are in agreement. The geologists had it worked out and the lawyers fouled it up.

Senator SCHMITT. But I don't want you to take credit for being a patent lawyer, because I don't think you are.

PREPARED STATEMENT AND SUBMITTED QUESTIONS

Thank you, Senator, and thank you, Mr. Ford. Your statement and the questions submitted for the record by Senator Byrd and maybe other members of the committee, including myself, will be inserted in the record at this point.

Thank you very much and we must move on to our next witness.

Mr. FORD. Thank you for your courtesy, sir.

[The statement and the questions, which were not asked at the hearing but were submitted for response for the record, follow:]

STATEMENT OF FORD B. FORD

Mr. Chairman and Members of the Subcommittee:

I am pleased to appear before you to present the 1983 appropriation request for the Mine Safety and Health Administration.

Our request for fiscal year 1983 totals $138,828,000 and 3,408 positions to conduct mine safety and health activities. The request does not include $15,000,000 which will allow us to finance 412 positions included in the total request of 3,408 positions. An amendment will be transmitted at a later date for this purpose.

Before I present MSHA's specific activity requests for fiscal year 1983, I would like to briefly outline MSHA's authorities and responsibilities for mine safety and health and to relate my thoughts and plans for the agency.

In 1977, the Federal Mine Safety and Health Amendments Act of 1977, P.L. 97-164, (Mine Act) was enacted. The Mine Act consolidated the safety and health requirements for all mines--coal and metal and nonmetal--under one statute. It provides MSHA with the authority to conduct inspections and investigations at mine sites and take a broad range of enforcement actions. It contains civil criminal sanctions, mandatory training and retraining requirements and provides MSHA with the authority to develop improved safety and health standards as well as other regulations. It also allows MSHA to provide technical assistance to mine operators. It further provides state grant funds to assist states in promoting mine safety and health. In summary, the Mine Act contains all the necessary elements for MSHA to provide incentives and assistance to miners and mine operators in achieving a successful safety and health program--technical assistance, enforcement authorities and education and training requirements. It also provides a framework for involving all segments of the mining community--management, labor and government--in pursuing our mutual goal of improving safety and health conditions for the Nation's miners.

MSHA has been organizationally structured around the various elements of the Mine Act. We have separate administrations for coal mine safety and health and metal/nonmetal mine safety and health, an education and training directorate, a National Mine Health and Safety Academy, a directorate of technical support and an assessment office. Each function contributes to safety and health. However, it is my belief that each function can contribute more effectively and efficiently to promote safety and health if the tools available to MSHA were employed in a more coordinated fashion. Therefore, I am reorganizing MSHA's field structure to place under the supervision of the District Manager all the tools available to MSHA which contribute to improvements in safety and health conditions. This will enhance the District Managers' ability to look at the conditions and practices of mines in their particular District and use the most appropriate mechanisms to assist in the reduction of accidents, injuries and illnesses.

Under the reorganization, the District Managers will have education and training specialists assigned to their staff who can contribute their particular skills and knowledge to the safety and health effort at the District level. These specialists, who are aware of the particular training needs of the individual mines, will be able to identify those mines and their needs for the District Managers. The District Managers can then deploy these specialists to the mines to work with management and labor to solve those problems in an atmosphere generally free of the threat of enforcement action.

We are also moving the conference functions presently related to the assessment of civil penalties to the District offices. In this way, any questions or problems arising from the inspection, and in particular the circumstances which lead to any safety and health violation, can be discussed and resolved at the District level with the individuals most directly involved.

These new functions will complement the enforcement activities currently in the Districts. I assure you that MSHA will continue to take strong enforcement action were necessary to achieve safety and health compliance, and to encourage a continual commitment to maintaining a safe and healthy working environment. The organizational changes I have discussed represent a broadening of the role of our field managers, in recognition of the need for a comprehensive approach at the District level to the improvement of safety and health conditions in the mines.

In this way, I believe that we will foster and strengthen the commitment of all parties--management, labor and government--to work together to achieve our mutual goal.

To summarize the objectives of my initiative, indeed my views regarding the role of MSHA in the mine safety and health program, it is to improve safety and health conditions in the mines through the concerted, cooperative efforts of management, labor and government. I believe that this comprehensive approach will allow us to target our resources and create an environment in which MSHA can have a positive impact on safety and health.

Enforcement

A total of $90.5 million and 2,681 positions is requested for enforcement activities in both coal and metal/nonmetal mines. These resources will provide for an estimated 31,920 regular safety and health inspections and 87,795 other inspections of the Nation's mining operations.

The Coal Mine Safety and Health program will complete an estimated 12,500 regular inspections and 63,280 other inspections in fiscal year 1982. In fiscal year 1983 MSHA coal inspectors will complete 16,850 regular inspections and 78,865 other inspections. This represents an increase of 4,350 regular inspections and 15,585 other inspections over 1982.

The Metal and Nonmetal Safety and Health program will complete an estimated 9,403 regular inspections and 5,972 other inspections in 1982. In fiscal year 1983 MSHA metal and nonmetal inspectors will complete 15,070 regular inspections and 8,930 other inspections.

Surface mining of stone, clay, colloidal phosphate, and sand and gravel were excluded from MSHA's jurisdiction after December 15, 1981. However, we are requesting that this exemption not be included in the fiscal year 1983 appropriation and have adequate resources in our request to carry out the provisions of the Mine Act related to mining activities of these commodities.

The Standards Development program will continue its review of metal and nonmetal standards. In addition, the review of coal standards initiated in 1982 will continue in 1983.

Assessments

In fiscal year 1983 a total of $2.7 million and 72 positions is requested for the Assessments program. The decrease in resources in 1983 is due to the 1982 reorganization which transferred the conference function to the District management operation.

Improvements in debt collection of civil monetary penalties will continue to be stressed in 1983 to increase the effectiveness of the assessment program.

New assessment regulations will be promulgated in 1982 to reduce the time spent on nonserious violations to allow increased time and resources for more serious violations.

Educational Policy and Development

A total of $12.6 million and 110 positions is requested for Educational Policy and Development (EPD) in fiscal year 1983. The decrease in resources in 1983 is due to the 1982 reorganization which transferred education and training field functions to the Enforcement Activity.

EPD resources will be used in fiscal year 1982 to provide policy guidance and to examine, coordinate, and monitor education and training programs conducted by Technical Support, the Coal and Metal/nonmetal administrations and the National Mine Health and Safety Academy.

In 1983 EPD will continue to provide unified and comprehensive staff oversight on all matters related to MSHA's role in education and training activities including Academy operations.

A total of $5.2 million is included for the State Grants program in 1983 for 37 participating states.

Technical Support

A total of $18.9 million and 361 positions is requested for Technical Support activities in 1983. Technical Support employment levels were reduced in 1982. This 1983 request reflects position reductions of 50.

Completion of the Dallas Pike facility in 1983 will provide for the consolidation and more efficient operations of the approval and certification program. An architectural and engineering contract was awarded in 1981 for the design of a 33,000 square foot building and construction will begin before the end of the current fiscal year.

Mine emergency equipment for the rescue and recovery of entrapped miners will be maintained at Hopewell, Pennsylvania. This site was purchased in 1981 to ensure MSHA of a permanent facility to house the equipment and associated personnel. Repairs and renovation scheduled in 1981 will be completed in 1982.

Program Administration

A total of $14.1 million and 184 positions is requested for Program Administration, a net increase of $519 thousand and 9 positions over 1982. This change results from the transfer of the Denver Computer Center, with 34 positions from Departmental Management along with a program decrease of 25 positions.

In 1983, Program Administration will continue to provide necessary staff support for efficient and economical Agency management.

Also included in the 1983 request are funds for the orderly replacement of 126 MSHA-owned motor vehicles which will meet GSA standards for replacement in 1983.

Conclusion

Mr. Chairman, that concludes my prepared statement. Members of my staff and I welcome this opportunity to answer any questions you and members of the Committee have regarding our budget.

BIOGRAPHICAL SKETCH

Ford Barney Ford was confirmed as Assistant Secretary of Labor for Mine Safety and Health by the U.S. Senate on October 26,1981. Prior to this appointment he had been vice president of the California Institute for Industrial and Governmental Relations. Ford helped establish the California Occupational Safety and Health Appeals Board in 1973, serving as chairman and public member until 1978. In 1967, Ford was appointed Deputy Secretary of the California Resources Agency. He became executive director and chief consultant to the California Senate Fact-Finding Committee on Natural Resources in 1959. Ford was acting postmaster of Bishop, California from 1951 to 1954 and later worked as administrative analysist for the state of California's Joint Legislative Budget Committee in 1955.

Ford was born in Norton, Va., in 1922. He attended Virginia Military Institute prior to enlisting in the Armed Services, where he served as an Infantry Officer during World War II in the European Theatre of Operations. He received his B.S. degree in production management and control in 1948 from the from the University of California at Berkeley. He later became a certified construction inspector for the city of Los Angeles and is registered in the State of California as both a safety engineer and an industrial engineer.

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

NATIONAL MINE HEALTH AND SAFETY ACADEMY

Question: What efforts are you planning in the coming year through the use of the Mine Health and Safety Academy to improve overall efficiency of the Agency in reducing injuries and fatalities?

Answer: As a result of the reorganization, the Academy will have a more direct education and training responsibility in support of coal and metal/nonmetal district offices as they assume expanded education and training responsibilities within their district. Both coal and metal/nonmetal have organized active training committees to work closely with the Academy in developing and establishing specific courses and programs to support the education and training needs of the inspectorate. This year, selected courses were expanded to deal directly with the most recent accident causes. This practice will continue in FY 1983 in an effort to address and emphasize specific and prevalent health and safety areas of concern.

Question: How much is budgeted for the Academy in fiscal 1983, compared to fiscal 1982 spending?

Answer: The FY 1982 funding level is approximately 6 million dollars. In FY 1983, the Academy will operate with approximately 6.6 million dollars.

LACK OF STATISTICS

Question: Why is it that MSHA doesn't compile safety and health statistics related to tonnage output of mines per worker?

Answer: There are several reasons for using hours worked rather than tonnage produced in measuring accident statistics. First, hours worked is a common denominator for all mines, whereas tonnage produced is not. That is, using tonnage would eliminate mines under construction, maintenance shifts, and active mines currently not producing. Second, production is impacted by system of mining, height of seam and other geological constraints that make it an impractical common denominator.

Question: Why are not statistics available which indicate inspection levels targeted for various types and sizes of mines?

Answer: Inspection levels are not determined by type or size of mines. The level is dependent upon hazardous conditions, citations and orders issued, requests of the miners, and other criteria. Two identical mines in size and mining system could have very different levels of inspections dependent upon the problems encountered, such as bad roof and excessive methane.

Question: Don't you think such statistics would be valuable to indicate progress in targeting resources at the most hazardous mines, as directed in last year's Senate report?

Answer: Statistics are maintained showing the accident frequency rates of specific mines. It is difficult, however, to compare one mine to another because of differing conditions. One accident at a small mine has a much more dramatic impact on the accident frequency rate than it does at a large mine. The best possible comparison is the mines's statistics against its previous history. Mines are rated as hazardous through our 103(i) program based on methane content, disasters, explosions, and other factors. Currently, each District

Manager has implemented an accident prevention plan in his/her district to reduce accidents. Mines chosen for this program are selected on a wide variety of elements including size, accident frequency rate, number of accidents, hazardous conditions, and citations issued.

Question: Could you provide such statistics to the Committee at a later date?

Answer: All of the elements in the statistical data base are already collected and through adjustment of figures, such data could be provided.

ASSESSMENTS

Question: What percent of penalties assessed mine operators are you actually collecting?

Answer: Approximately 90 percent of the violations assessed are paid. The remaining 10 percent are referred for collection through the courts.

Question: What studies have you conducted that would indicate the impact that lower penalty assessments would have on the mining accident rate?

Answer: There have been no recent studies made regarding the impact of the assessment program on improving safety and health in the mining industry. We believe, though, that civil penalties together with other enforcement tools have enabled MSHA to contribute to improved health and safety. MSHA is proposing under new regulations that a single penalty be assessed for all nonserious violations. It is felt that this will save the time of government and industry in processing or less serious violations which will result in the better allocation of resources towards conditions and practices which have a more direct impact on miner health and safety.

DALLAS PIKE FACILITY

Question: Your budget justification indicates you plan to complete construction of the Dallas Pike Mine Equipment Safety Testing Facility in fiscal 1983. Since this facility was designed to improve efficiency of operations, and replace currently leased space, why isn't a savings reflected in the 1983 budget?

Answer: The fiscal year 1983 budget does not reflect any real dollar savings due to the majority of current operations being housed in Government owned structures and trailers.

The approval and certification program operates mainly at the Dallas Pike facility. Due to space limitations at Dallas Pike, segments of the approval and certification program are operating at three other locations, those being: Pittsburgh, PA; Bruceton, PA; and Beckley, WV.

The program operations at Beckley, WVa., are conducted within the National Mine Health and Safety Academy which is owned and operated by MSHA. Therefore, there are no costs concerning leased spaced.

While MSHA does pay operating costs for space from the Bureau of Mines at the other two locations (Pittsburgh and Bruceton), there are only 15 persons involved in approval and certification testing who will be relocated to Dallas Pike. Since the vacated space will be utilized by new coal inspectors, no dollar savings are anticipated.

The Dallas Pike facility will accommodate better program integration and efficiency by providing a proper working environment for all personnel and allow for flexibility in physical facilities so the organization can react quickly and positively to changing technology needs.

Question: How much is currently being spent on leased facilities that will be consolidated into the new building at Dallas Pike, West Virginia?

Answer: Since MSHA makes lump sum payments to the Bureau of Mines for space and related services which is based on overall occupancy rather than a strict square footage charge, it is impossible to segregate costs for the 15 persons who will be relocated to Dallas Pike. In fiscal year 1982, MSHA will spend a total of $1,488,000 for all space and related services provided by the Bureau of Mines.

PURCHASE OF CARS

Question: Your opening statement indicates you plan to replace 126 motor vehicles in fiscal 1983. How does this square with your proposed bill language change, which requests "the purchase of not to exceed eighty-eight passenger motor vehicles for replacement only"?

Answer: The remaining 38 are for the replacement of special purpose motor vehicles which do not require legislative authority.

Question: What would happen if you were limited to last year's bill language proviso, allowing the purchase of not to exceed forty passenger motor vehicles?

Answer: If MSHA were limited to the purchase of 40 passenger motor vehicles in 1983, many vehicles which exceed the mileage and age criteria for replacement would be in operation. Due to more frequent repairs and increased maintenance, MSHA inspection personnel would not be assured of having reliable vehicles to accomplish their enforcement responsibilities at the mine sites.

Question: How much would be saved from your fiscal 1983 budget if only forty motor vehicles were replaced?

Answer: If a total of forty motor vehicles were replaced, $693,000 would be saved. However, additional maintenance funds would be needed to cover higher operating costs.

TECHNICAL SUPPORT

Question: Last year MSHA witnesses outlined a new analytical method to help reduce time required to take and analyze dust samples. How much has implementation of this method increased efficiency?

Answer: Prior to implementation of the "new" method of quartz analysis, it was necessary for inspectors to sample for several days in a working place in order to provide sufficient dust to perform quartz analyses. These samples had to be composited and even then many of these composite samples did not contain sufficient dust to determine the quartz content. In 1980 when the "old" method was still used, approximately 59,000 respirable coal mine dust samples were collected and submitted for quartz analysis. Of these, only 1,500 quartz determinations were made with the remaining composite samples providing insufficient quantities of dust for valid determination of quartz content. With the new single sample method of analysis, the amount of dust required for a valid determination was reduced from about 4 to 0.5 milligrams which can usually be collected in one day's sampling. This resulted in increased efficiency in that the numbers of samples required to be collected were reduced and the resulting numbers of quartz determinations increased. Since implementing this new method, approximately 8,000 respirable coal dust samples were submitted for analyses resulting in about 8,000 quartz determinations being reported to Coal Mine Safety and Health.

Question: How are other Technical Support activities increasing efficiency and reducing costs at MSHA?

Answer: In order to reduce costs and efficiently utilize funds, the five Technical Support centers have implemented administrative controls on travel, space and supplies. In addition to advance planning to secure lowest possible fares and utilization of Government vehicles when possible, a concerted effort has been made to consolidate field trips when possible. Purchasing the Hopewell Mine Emergency Operation facility and transferring the Salt Lake MEO equipment in 1981 reduced rentals by $100,000 per year. An additional $150,000 savings per year was realized by cancellation of the contract to maintain the remote sealing equipment which was also transferred to the Hopewell MEO facility. The equipment can be maintained adequately with existing field staff.

Question: How has Technical Support contributed importantly to accident reduction, as opposed to illness reduction in the past year?

Answer: Technical Support has continued to provide expert scientific and engineering assistance to the mining industry and to MSHA. Included in this assistance are the responses to mine emergencies, testing and certification of mining equipment, conducting in-mine and laboratory investigations, and recording, analyzing and reporting accident, injury and illness data. These functions have contributed importantly to accident reduction.

During rescue and recovery operations following mine disasters, Technical Support provides assistance in various aspects of these operations. In addition to the MEO equipment and personnel, a mine emergency advisory task force has also been dispatched to provide assistance for the safe conduct of such operations. Depending upon the nature of the situation, expertise and equipment are provided in the area of ventilation, gas detection and analysis, roof and ground comprise the task force are provided as needed from various Technical Support divisions in accordance with the situation to provide assistance and advice to the officials on site.

Technical Support personnel also conduct investigations designed to assess hazardous conditions and make recommendations to correct the condition. The information and recommendations are also utilized in the review and approval of various plans such as roof control, ventilation, methane, and dust control which are submitted by the mine operators.

Technical Support personnel and expertise were also utilized in preparing and conducting training programs. In addition, Technical Support has continued to record and analyze accident and injury data. Analyses of these data result in trend indications that can be utilized by the mining industry and MSHA are distributed to industry and labor to concentrate efforts and resources for reduction in accidents.

EDUCATIONAL POLICY AND DEVELOPMENT

Question: Your budget justification shows a reduction of 134 Federal staff related to MSHA educational and training programs, but your opening statement indicates this merely reflects a transfer of functions to the Enforcement activity. Specifically, how many educational and training specialists will be assigned to district offices under your reorganization?

Answer: Approximately 119 education and training employees were assigned to Enforcement district offices under the reorganization. Included in this number are education and training specialists as well as other support personnel. The number of education and training personnel who will relocate under the Enforcement district offices is uncertain at this time since employees may decline the reassignment.

Question: What is the total amount in your fiscal 1983 budget for education and training activities, compared to fiscal 1982?

Answer: Under the Educational and Policy Development (EPD) activity, the following amounts are available for education and training activities in FY 1982 and FY 1983:

	FY 1982	FY 1983
Enforcement education and training*	$ 3,809,000	$ --
State grants program	3,228,000	5,250,000
EPD (Including the Academy)	6,594,000	7,360,000
Total EPD	$13,631,000	$12,610,000

*This amount represents education and training activities conducted for two-thirds of the year before the transfer to Enforcement as part of the reorganization.

Question: How much is included in the budget for state grants for education and training, exclusive of sand and gravel activities?

Answer: In FY 1982, the state grants program has 3.2 million dollars available for education and training, exclusive of sand and gravel activities, the FY 1983 request of $5.2 million includes funds for sand and gravel activities.

STATUTORY MINIMUM INSPECTION LEVELS

Question: Do you feel that MSHA should be forced by statute to conduct a minimum of four annual inspections of all underground mines, and at least two inspections annually of all surface mines, regardless of the evidence about the relative safety of certain types and sizes of mining operations?

Answer: MSHA should be required by statute to inspect each underground coal or other mine in its entirety at least four times a year. Also, MSHA should establish criteria to determine the minimum number of inspections to be made at each surface coal or other mine.

Such criteria should consider appropriate factors including, but not limited to, the rate of injuries, the incidence of fatalities, the nature of the mining operation and the number of miners employed at the mine.

Question: Couldn't your resources be more effectively used if you had the flexibility to concentrate Enforcement efforts more fully on the most dangerous segments of mining activities?

Answer: MSHA's resources could be more effectively utilized if it had greater flexibility to concentrate enforcement efforts at the most hazardous mining operations. The establishment of criteria to determine the minimum number of inspections to be made at each surface mine would give MSHA more flexibility.

COMPLIANCE ASSISTANCE

Questions: To what extent is you Compliance Assistance Visit (CAV) program growing?

Answer: Operator response to the CAV program has been very encouraging. During fiscal year 1981, 2,494 CAV's were conducted--a 17 percent increase over fiscal year 1980. Of 2,494 CAV's conducted in 1981, 82 percent were requested by mining operations which were removed from MSHA jurisdiction by Public Law 97-92 and the current continuing resolution. For this reason, there has been a substantial decrease in the number of CAV's this year. During the first half of fiscal year 1982 MSHA conducted 328 CAV's compared to 1,065 during the same period last year.

Question: What complaints by mine operators still remain about further needs for additional consultation or compliance assistance?

Answer: In previous years some operators have expressed an interest in nonpenalty consultative visits while the mine is actively operating. Because the overwhelming majority of CAV's were conducted at operations which have been removed from MSHA jurisdiction, we have had very little recent impact on the program. What input has been received has been positive.

Questions: How are requests for compliance assistance apportioned among the various categories of mines?

Answer: During fiscal year 1981, 82 percent of the CAV's were requested by surface mining operations involving stone, clay, colloidal phosphate, sand and gravel.

The following chart indicates how CAV's were apportioned among the various mine types in fiscal year 1980 and 1981:

	1980		1981	
Types of Mine	No. of CAV's	% of Total	No. of CAV's	% of Total
Underground	146	7	247	10
Open Pit	108	5	168	7
Stone Quarry	645	30	683	27
Sand and Gravel	1,123	53	1,224	49
Mill	102	5	172	7
Total	2,124	100	2,494	100

STANDARDS DEVELOPMENT

Question: What is the status of standards development for both coal and metal and nonmetal mines?

Answer: MSHA has undertaken a comprehensive review of existing metal and nonmetal mine safety and health standards. The purpose of this review is to improve the quality and effectiveness of MSHA's standards by eliminating duplication, reducing excessive recordkeeping requirements, upgrading provisions consistent with advances in mining technology, and eliminating unnecessary standards. An advance notice of proposed rulemaking announced this review on March 25, 1980 and the public was invited to fully participate in all aspects of the review. Based on the public input and MSHA's analysis, the Agency selected eight sections for initial priority review and asked for additional input. These sections contain standards which cover ground control; fire prevention and control; air quality; explosives; loading, hauling, dumping; electricity; use of equipment; and gassy mines.

At the present time, MSHA is conducting a series of public conferences through the country to discuss issues relating to these standards. Information gathered at these conferences will assist MSHA in developing regulatory proposals.

MSHA is preparing for a review of the standards applicable to coal mines. An internal review of the standards has begun and public input will be solicited at a future date. In addition to these two general standards review projects, MSHA is developing a standard for selection, use, examination and retirement of wire ropes used at all mines to remove the incorporation by reference and to update the standard.

Question: What new projects are being undertaken by the Standards Division now? Particularly, what is happening in the health standards area?

Answer: The Office of Standards, Regulations and Variances coordinates all phases of the Agency's regulatory activities, relying upon the technical expertise of the specialists in MSHA's program offices for input.

Currently, that office is coordinating the review of the metal and nonmetal standards, the development of a final rule which will revise MSHA's existing procedures for proposing civil penalties, the development of standards for wire ropes used at mines, and the development of an alternative program for the approval of certain mining equipment as "permissible" for use in mines. The office will soon be coordinating the review of the standards for coal mines.

In the area of health standards, the major effort is focused on the revision of the standards for air quality at metal and nonmetal mines. This effort is part of the overall review of standards. The standards for air quality have been selected for priority consideration. MSHA is examining exposure limits, sampling and analysis methods, respiratory protection programs and related issues for exposures to airborne contaminants in mine environments.

The Agency has received a petition for rulemaking on exposure to radiation. In 1980 the National Institute for Occupational Safety and Health (NIOSH) submitted to MSHA a report which stated that there is an increased risk of lung cancer at the level permitted by the existing standards. Since that time a joint NIOSH/MSHA working group has been assisting in the development of more complete and definitive data. We expect that NIOSH will complete the report late this year. At that time MSHA will decide whether to proceed with rulemaking.

NIOSH is also working on a comprehensive standards recommendation for asbestos exposure in mining. MSHA intends to address this issue after receiving the NIOSH recommendation.

Question: How will activities in the coming year contribute to cost savings and efficiency increases in standards enforcement?

Answer: MSHA is reviewing its standards to reduce duplicative requirements, eliminate outdated or unnecessary standards, simplify and classify requirements, and delete incorporation by references. As a result the standards will be easier to understand, to comply with and to enforce. These activities will contribute to increased efficiency and cost savings in standards enforcement.

FUNDING UNDER CONTINUING RESOLUTION

Question: Mr. Ford, what is the total amount of funding available to the Mine Safety and Health Administration (MSHA) under the Continuing Resolution which expires Sept. 30, 1982, but which you are restricted from spending by the Rousselot and Melcher amendments?

Answer: The fiscal year 1982 funding amount available to MSHA under the Continuing Resolution (Public Law 97-161) is $149,313,000. Since December 15, MSHA has been operating under the above mentioned amendments. On January 4, 1982, MSHA furloughed approximately 200 employees. Since the amendment is continued through September 30, 1982 action is underway to permanently reduce the workforce by a total of 259. In addition, funds available for State grants have been reduced proportionate to the reduction in the number of mines covered by the Act. Net savings, after severance pay, reorganization and relocation costs, and including $2,939,000 applied to partially cover increased pay costs total $4,095,000

Question: Have their been any costs which have offset a portion of these savings?

Answer: There have been costs for the termination of employees whose work involved the exempted mining activities and costs for employees relocated because of the RIF's and bumping rights of the employees directly affected. In addition, employees are entitled to severance pay based on their age and length of service.

Question: What would the total savings be for fiscal year 1982 including costs associated with employee terminations, etc.?

Answer: MSHA estimates the savings for fiscal year 1982 will be about $2 million when considering costs associated with employee terminations and relocations as well as savings occurring as a result of the furlough and reduction in force. In addition, the state grants program is being reduced proportionately by $2,772,000 to reflect the loss of surface mining operations involving stone, clay, colloidal phosphate and sand and gravel from MSHA's jurisdiction after December 15, 1981.

Question: Footnote 2 of rescission R82-23a indicates that the entire amount presently proposed for rescission is $2,095,000 and that this amount is attributable to the six month period ending March 31, 1982. Is that information correct or are these net annual savings for fiscal year 1982? If the $2,095,000 is an annual net savings, isn't it premature at this time to propose the rescission?

Answer: The amount of $2,095,000 proposed for rescission is the net annual savings for fiscal year 1982 less the $2,000,000 additional funding for coal mine inspections. The amended rescission proposal was transmitted in the ninth 1982 special message to the Congress. It is not premature to propose the rescission at this time because savings in State grants are normally allocated at the beginning of the year.

Question: What is the purpose of the proposed rescission since the document transmitted by the President indicates that there is no outlay savings from the rescission itself because the funds would lapse at the end of the year?

Answer: The purpose of the rescission is to reflect that portion of MSHA's budget authority which will not be obligated because the Continuing Resolution prohibits the obligation or expenditure of any funds to enforce the Federal Mine Safety and Health Act of 1977 in connection with surface mining of stone, clay, colloidal phosphate, sand or gravel.

ROUSSELOT AMENDMENT

Question: If the Rousselot amendment is continued for the remainder of fiscal year 1982, will you have to terminate a number of employees, and if so, how many?

Answer: MSHA estimates that 259 employees will be terminated in fiscal year 1982 as a result of the restrictions contained in the Continuing Resolution

Question: Will there be certain termination costs incurred by MSHA if the Rousselot amendment is continued, and if so, how much?

Answer: MSHA estimates the following termination costs as a result of the continution of the Rousselot amendment:

Terminal leave	$ 726,000
Severance pay and unemployment compensation	1,518,000
Travel costs for employee reassignments	384,000
Employee relocation costs	525,000
Total	$3,153,000

Question: Have these costs been taken into account in determining the amount available for rescission?

Answer: These costs have been taken into account in determining the amount available for rescission.

Question: Please provide for the record a full accounting of the total costs and savings associated with the Rousselot amendment for the first six months of fiscal year 1982 and separately for the entire fiscal year 1982.

Answer: MSHA estimates the following savings and costs as a result of the Rousselot amendment:

Costs and Savings for First Six Months of Fiscal Year 1982

Costs:	
Travel costs for employee reassignments	$384,000
Savings:	
Personnel savings for furlough/reduction in force	1,452,000
Net Savings	$1,068,000

Costs and Savings for the Entire Fiscal Year 1982

Costs:	
Terminal leave	$ 726,000
Severance pay and unemployment compensation	1,518,000
Travel costs for employee reassignments	384,000
Employee relocation costs	525,000
Total Costs	$3,153,000
Savings:	
Personnel savings for furlough/reduction in force	3,823,000
Reduction in administrative support costs	1,341,000
Total Savings	5,164,000
Net Savings	$2,011,000

In addition, the state grants program is being reduced proportionately by $2,772,000 to reflect the loss of MSHA jurisdiction over surface mining operations involving stone, clay, colloidal phosphate and sand and gravel in accordance with the Continuing Resolution (Public Law 97-161).

Question: The President originally proposed to rescind $4 million according to proposal number R82-23. This proposal was subsequently amended on February 19, 1982 when the Administration proposed to rescind only $2,095,000 and reprogram the balance of the original proposal to the MSHA coal mine enforcement program. Why hasn't MSHA sent a formal reprogramming request to the Committee with respect to this proposed transfer of funds from the metal/nonmetal enforcement program to the coal enforcement program?

Answer: Originally, it was believed that a separate reprogramming action would not be needed since Congress would be acting on the rescission/reprogramming as one item. However, since the rescission was not approved a reprogramming request is currently being developed for transmission to the Congress.

Question: How many people and how many staff years will this addition to the coal enforcement program provide?

Answer: The addition to the coal enforcement program will provide 412 additional positions and 412 additional staff years over the original FY 1983 budget proposal.

Question: Does the reprogramming provide any resources to the coal enforcement program in addition to new inspectors, and if so, please describe fully?

Answer: The reprogramming does not provide any additional resources other than the 412 additional positions. These positions include inspectors and other enforcement and clerical support personnel.

Question: Has MSHA actually reprogrammed any of these funds to the coal program at this time prior to Committee approval?

Answer: MSHA has not reprogrammed any of these funds. No action will be taken by MSHA until the reprogramming request is approved by the Congress.

Question: When will we see a reprogramming request if the President's rescission proposal is not accepted by the Congress?

Answer: A reprogramming request is currently being developed for transmission to the Congress.

BUDGET AMENDMENT

Question: The President also announced on February 6, 1982, a fiscal year 1983 budget amendment of $15 million to supplement the coal enforcement program in addition to the proposed reprogramming in fiscal year 1982. When will this amendment be transmitted to Congress?

Answer: The President is monitoring the budget and its development as it proceeds through the appropriation process. The amendment will be transmitted at the appropriate time in that process.

PROPOSAL FOR LATER TRANSMITTAL

Question: The President's fiscal year 1983 budget on page 8-96 notes a reduction of $8.9 million to the MSHA budget request as a proposal for later transmittal. What is the nature of this proposed reduction, how was it developed, what programs would be reduced, and when does the Administration anticipate transmitting this reduction formally to Congress?

Answer: The $8.8 million reduction shown in the President's budget for MSHA in 1983 is a place holder for possible submission of legislative changes from MSHA. The details of the changes are still under discussion, and are not clear at this time. Also, the timing of submission of any legislation is not cler.

Question: The Urgent Supplemental Appropriation Bill for fiscal year 1982 (H.R. 5922) which was originally reported by the House Appropriations Committee prior to the Easter Recess contained language in section 203 which restores to the Mine Safety and Health Administration the same enforcement authorities vested in the Administration on September 30, 1981. This language would negate the effects of the Rousselot Amendment which presently limits MSHA authority. Do you support language such as is contained in Section 203?

Answer: MSHA supports the language contained in Section 203 of the Urgent Supplemental Appropriation Bill of 1982.

Question: If language such as that contained in Section 203 is added to a Supplemental Appropriations Bill this fiscal year, how will this influence the pending $2 million rescission? How will this affect the RIF of sand and gravel personnel which is presently underway?

Answer: Since Congress has not acted on the pending rescission within the allowed time the rescission will not be accomplished; therefore, the language in Section 203 has no influence. A determination of funding levels will be made after consultation with the Office of Management and Budget. Subsequent employment actions will be consistent with approved funding levels.

BUREAU OF LABOR STATISTICS

STATEMENT OF JANET L. NORWOOD, COMMISSIONER

ACCOMPANIED BY:

WILLIAM G. BARRON, ASSOCIATE COMMISSIONER FOR ADMINISTRATIVE MANAGEMENT

MARY ANN WYRSCH, DIRECTOR, OFFICE OF BUDGET

INTRODUCTION OF ASSOCIATES

Senator SCHMITT. Our next witness is Ms. Janet Norwood, Commissioner of the Bureau of Labor Statistics.

Commissioner Norwood, please introduce your colleagues.

Ms. NORWOOD. Thank you, Mr. Chairman. It is a pleasure to be here. I have with me Mr. William Barron, who is responsible for our internal operations.

1983 REQUEST

I'd like to ask that my statement be included in the record. Let me just say that we are requesting a budget of $120.1 million for fiscal 1983, which is funding required to carry forward into the coming fiscal year all of the programs remaining after the 12-percent reduction in fiscal 1982.

BLS, as you know, is a very small agency. We are also one of the oldest agencies. We are almost 100 years old, having preceded the Department of Labor. Our budget represents less than one-half of 1 percent of the Department of Labor's total appropriation. We believe that the output that is covered in our budget request is essential. These data permit evaluation of the health of the economy, and four of the basic series—the Consumer Price Index, Producer Price Index, the Employment Cost Index, and our monthly Payroll Series—are widely used to escalate income and contract costs that affect literally hundreds of billions of dollars in private contracts, as well as in the Federal budget.

We have worked hard this year to contribute to the President's budget reduction initiatives, while preserving the basic core of economic intelligence for which BLS has responsibility.

The requested appropriation of $120.1 million is, I believe, essential to maintain the quality and the timeliness of our critical base program. I'd be glad to try to answer any questions that you may have.

STATISTICAL SERIES

Senator SCHMITT. Thank you. You've testified before this committee that much of the data the Bureau collects is mandated by law. If we were to make recommendations on which data series collection should be dropped from law, what guidance could you give us? Is there anything that you're doing that nobody ever uses and you'd just as soon not do?

Ms. NORWOOD. Mr. Chairman, I found that there is always a user for any statistical series in existence.

Senator SCHMITT. The corollary to that is that if you mandate a certain set of statistics, somebody will come along and use them; is that correct?

Ms. NORWOOD. I think that's true. Our experience has been that it's the Congress of the United States that is the primary user, and I think that's for good reason. We have eliminated or sharply reduced 19 programs. Those programs which are in that cut list, some of the programs in that cut list are required by law, and we reduced them, but only to the limits allowable by law.

For example, we are required by law to produce data on work days lost due to strikes. We will continue to produce those data, but only covering establishments of 1,000 or more, which is a very small proportion of all strike statistics.

So we have tried our best to live up to the law and still reduce our budget. And we have tried to do so by eliminating programs, even though they have important users, because those that we continue, especially the basic core of data, which is what is covered by this appropriation request, must be of reasonable quality.

Senator SCHMITT. Yes; you could get into trouble by having data that wasn't of particularly good quality.

Have you ever considered charging for the data so that you might be able to improve quality as well as quantity?

USER CHARGES

Ms. NORWOOD. Yes; we have looked at user charges. We do sell publications. We sell tapes and so on. But there are laws that we have to follow about that. We do a considerable amount of contract work for other parts of the Department. We have done work for the private sector, but that involves having personnel and we run into difficulties with personnel ceilings.

Senator SCHMITT. But is this under consideration, couldn't implementation of user charges justify increased personnel ceilings which, in turn, improve your data?

Ms. NORWOOD. I think that any new series that we take on, we will certainly discuss that issue with OMB. For the basic core of data that is covered by this appropriation, however, we believe that these are critical to the Nation and that they must be considered to be objective and therefore, cannot be paid for by any single group.

Senator SCHMITT. Well, to some degree, the data you collect and the money expended for that, subsidizes a fairly large industry, does it not, the economic forecasting industry. And they, in turn, with the largesse that you provide it, sell what they produce for quite handsome prices.

Do you think that they ought to be paying a little bit more to the Government? I understand that, generally, they get their information free, or at least they pay only for the cost of the publication?

Ms. Norwood. Mr. Chairman, there are laws which we follow which have been established by the Congress about user charges. We can't change those by ourselves.

Senator Schmitt. Well, what I'm asking is are you considering recommending that we change them?

Ms. Norwood. Well, we've always felt that we would like to see a system of using the private sector for things like printing charges and for things like distribution. In fact, we're unique among the statistical agencies in having a competitive system installed in our use of computers. We use a private computer center and one of the most efficient Government computer centers and shift our work, depending on where we can get the best work done for the cheapest amount of money. We have found that that works very well.

We used to, some years ago, have our own computer center. We think we do some things extremely well. We collect data. We compile the data. We understand how to put things together. We understand the concepts and we know how to analyze data. But we found that we did not know how to run a very efficient computer center. And so we use the private sector, as well as the Government sector so that we can get the best and most efficient and cheapest service.

Senator Schmitt. But what about these economic forecasting operations, such as Data Resources and Chase Econometrics, Wharton, et cetera, that use Government data, which is essentially free to them? Are you considering that we might charge them, not only for the cost of publication, but some reasonable user charge for the cost of production of the collection and analysis?

Ms. Norwood. They use the same data that is used by the Congress, by labor, by business, and by the general public. We have to treat all users in the same way. I don't think that we would want to charge the Congress or the administration or the press for information on the Consumer Price Index, for example. And so it's rather difficult, since those data are available, to charge some of the forecasting units.

On the other hand, if they ask for special things that are not a part of our regular program, we do charge them, and we charge them the full cost.

Now as to being able to make a profit on it, that's a question that really goes beyond our single statistical agency. That's a Government-wide policy and there are laws, as I understand it.

HOMEOWNERSHIP COMPONENT

Senator Schmitt. In response to questions from this committee last year, you indicated that a test program was needed before the homeownership component of the CPI could be replaced by a rental equivalence measure. Yet, it was announced in October 1981 that such a change in the CPI was to be made beginning with data for January 1983.

Could you explain why the test program was no longer felt to be necessary or that it was accomplished in a shorter amount of time than you anticipated?

Ms. Norwood. We accomplished some of the testing in a shorter time and we are making increasing progress, faster progress than we had anticipated. We have become very concerned about changes in the housing market. As I'm sure you're aware, that because of interest rate arrangements and changes in the Federal Housing Administration guarantees, the data system that we use, which comes from FHA data for house prices, is quite limited. We have become quite concerned about that.

In addition, there has been a lot of creative financing in which sellers finance their homes. As a result of that, we felt it necessary to speed up our work and we have announced this change. We have also indicated that continued work will go on, even after the change in the Consumer Price Index for all urban consumers. There is a two-stage process that is required and that's all entirely consistent with our proposal to this committee.

Senator Schmitt. Except that we didn't expect you to do it as soon as you did it. That wasn't consistent.

Ms. Norwood. I don't think we indicated, Mr. Chairman, in our request and in our discussion last year exactly what the timing would be. But I am sure that you would agree with me that we have to do everything we can to see to it that the Consumer Price Index is as representative of economic conditions as we can make it.

Senator Schmitt. Well, I would think so, but unfortunately, whatever you do, the formulas that are used to calculate various colas and other budgetary increases based on the CPI themselves do not relate to current conditions. If inflation is going up, well, then they tend to provide too little. If inflation is going down, they provide too much because of the lag in the way that those formulas work.

So that's not your fault.

Ms. Norwood. Well, I have found, Mr. Chairman, that on one side or the other, there are people who think that our data are either too high or too low. But, in a way, that's what we're here for, to be completely objective and to try to provide the truth, to the extent that we can.

PREPARED STATEMENT AND SUBMITTED QUESTIONS

Senator Schmitt. We are not going to keep you any longer. Your statement and some additional questions will be inserted in the record at this point. Thank you for coming up one more time for such a short period. I appreciate it.

[The statement and the questions, which were not asked at the hearing but were submitted for response for the record, follow:]

STATEMENT OF JANET L. NORWOOD

Mr. Chairman and Members of the Subcommittee:

I appreciate this opportunity to appear before you to present the Bureau's FY 1983 appropriation request.

The Bureau of Labor Statistics is requesting $120.1 million for FY 1983, a net increase of $7.1 million over the FY 1982 level. The Bureau's FY 1983 request provides funds to carry forward into the coming fiscal year all the programs remaining after the 12 percent reduction in FY 1982. No further statistical program increases or decreases are contemplated at this time. The $7.1 million increase is to meet (a) mandatory, largely inflationary, increases in such operating costs as rent, telephones, and contract services for data collection, like the Census Bureau charges for collecting unemployment and other data; and (b) other administrative requirements such as replacing electronic equipment essential to continue the transmission of data between the field, the computer centers and the national office.

In FY 1983, because of general budget contraints and operational dislocations stemming from the recent program reductions, the Bureau will be hard pressed to maintain the quality and timeliness of its basic core programs in the employment, unemployment, price, wage and industrial relations, and productivity areas, all of which are essential to tracking the performance of the economy. Nineteen programs are being either eliminated, reduced, or deferred in FY 1982. Despite the budgetary problems, which all of us in government are confronting, we must manage to accomplish some changes as we continue our basic program.

Last year, the Congress appropriated funds to expand the rent sample to represent more adequately rental units of the same type and in the same locations as owned units. This work is extremely important since the homeownership component of the CPI will be shifted to a cost of shelter concept in January 1983 for the CPI-U and in January 1985 for the CPI-W.

In the labor force area, beginning in January 1983, the Bureau will include members of the Armed Forces in the definition of the labor force, as recommended by the National Commission on Employment and Unemployment Statistics (NCEUS) and approved by the Secretary of Labor. A report on labor-market related economic hardship--also part of the NCEUS recommendations--has been published.

Program expansions funded for the producer price measures and import and export price indexes are being cut back and stretched out to conserve resources in FY 1982. In addition, redesign of the sample for the Current Population Survey and revision of the industry employment, hours, and earnings series are also being delayed by the need to conserve BLS resources.

The Bureau of Labor Statistics--a statistical agency now nearly 100 years old--is small: less than one-half of one percent of the Department of Labor's total appropriation. Its output is essential to the Nation: not only does its data permit evaluation of the health of the economy, but four of its series--the Consumer Price Index, Producer Price Index, the Employment Cost Index, and payroll earnings data--are widely used to escalate income and contract costs that affect literally hundreds of billions of dollars in private contracts and in the Federal budget. We have worked hard this year to contribute to the President's budget reduction initiatives while preserving the basic core of economic intelligence for which the BLS has responsibility.

The remaining data series used to evaluate economic and social policy must be objective and of high quality. The requested appropriation of $120 million to maintain the quality and timeliness of the Bureau's critical and widely watched indicators is money well invested.

I hope these remarks are helpful in outlining the Bureau's present programs and future plans. This concludes my statement. I welcome your questions on any of these points.

Thank you, Mr. Chairman.

BIOGRAPHICAL SKETCH

Janet L. Norwood was appointed Commissioner of the Bureau of Labor Statistics by the President in May 1979. Prior to her appointment, she had been Acting Commissioner for one year. She was a career Civil Servant in the BLS for 18 years prior to her appointment.

Dr. Norwood joined the Bureau as an economist in 1963 in the Office of Foreign Labor and Trade, became manager of the international price comparison program, and for several years was responsible for the BLS Consumer Price Program. Prior to her entering the Federal service, Dr. Norwood taught at Wellesley College and was an economist at the William L. Clayton Center, Fletcher School of Law and Diplomacy.

Dr. Norwood received her B.A. from Douglass College, Rutgers University, and her M.A. and Ph.D. from Tufts University. She is the author of numerous articles on unemployment, prices, wages and trade problems.

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

CPS REDESIGN

Question: BLS announced that the population counts derived from the 1980 Census will be incorporated into the Current Population Survey in January 1982.

How does this procedure differ from the redesign of the CPS using 1980 Census data which you say will need to be postponed as a result of budget cutbacks?

Are the data any less reliable?

Answer: Two major adjustments routinely occur in the Current Population Survey as a result of the availability of data from the new Decennial Census. One is the introduction of the population data from the census into the estimation procedures used in the survey. This conversion to the new population counts was carried out with the publication of data for January 1982. For a variety of reasons, this particular adjustment was larger than those following the three previous censuses, and the Bureau adjusted for the differences between the 1970-based and 1980-based estimates by using a wedging procedure to revise data back to 1970, rather than accepting a large break in series between December 1981 and January 1982.

In addition to the adjustment to the survey estimates resulting from more accurate population figures, a redesign of the entire survey typically follows a new census. The main purpose of a redesign is to select new samples for use in the ensuing decade, as the old sample is typically exhausted after about 10-12 years. This process takes advantage of the materials available from the most recent census to increase the efficiency of the sample and of the field operations associated with data collection. These efficiencies derive not only from having the most recent information on population distribution from the census but also from advances made over the decade in statistical methodology and improved survey technology.

The reliability of the data was clearly improved with the introduction of the 1980 Census population counts into the survey estimates. We expect that additional improvement in reliability, particularly for data for States and areas and for important demographic groups such as blacks and Hispanics, will result from the overall redesign. The most significant benefits of redesign, however, are to enable actual selection of new, improved samples that will extend to the mid-1990's and to allow for the introduction of new program objectives into the survey operations.

COLLECTIVE BARGAINING SETTLEMENTS

Question: There is some indication that collective-bargaining is shifting from industry-wide contracts to firm, or even plant-level contracts. Such shifts will probably become more pronounced during the 1980's.

Given this shift, how useful will BLS data on collective bargaining be, given that they are primarily limited to contracts affecting 1,000 workers or more?

Answer: As a result of the 1982 reduction of 12 percent, the Bureau will no longer provide any information on collective bargaining settlements in units of less than 1,000 workers. If a trend develops towards settlements by smaller units—as you suggest it might—the Bureau would be unable to provide any direct information about the settlement characteristics. On the other hand, the settlement information for units of 1,000 or more now covers about half the organized workers in the country and the settlements in these large units are often considered to be pacesetters that are adopted by smaller units.

PRODUCER PRICE INDEX REVISION

Question: What is the status of the Producer Price Index Revision Program?

Answer: The revision of the Producer Price Index has progressed well into the publication phase of the project, although current and previous budget constraints have caused its completion to lag about one year. The revision is a phased, industry-by-industry survey process including redesign and resampling. Publication of new indexes and inclusion of new data in the totals occurs on a flow basis as the revised measures are completed.

Currently, one-third the value of the mining and manufacturing sector of the U.S. economy has been surveyed and published. The coverage of the revision is expanded twice each year, with release of January and July data. From a pre-revision base of 10,000 price quotes per month, the new survey has replaced and augmented the data base so that about 36,000 prices are now collected and 100,000 quotes are expected when the revision has been completed in 1985.

The major goals of the revision--better representation through larger samples, introduction of statistical sampling, elimination of multiple weighting, classification by SIC, and rigorous transaction pricing--have consistently been accomplished for the industries thus far revised.

Question: How has this effort been affected by budget constraints?

Answer: Lower-than expected funding has had two types of effects on the revision program:

1. Completion, originally planned for 1984, has been rescheduled for late 1985. Expansion in the service sector was suspended entirely.

2. Analysis has been curtailed. Therefore, expansion of the survey into technologically complex industries such as computers, custom construction, shipbuilding and large aircraft has been deferred. Similarly, analysis has been minimal for the results of the revision already accomplished. Calculation of variances has been delayed by at least one year and comparative studies of pre- and post-revision estimates were suspended. All of the reduced level of resources has been devoted to data collection and index estimation.

Question: What is the cost of CPI and PPI rebasing?

Answer: The direct costs of rebasing the CPI and PPI were estimated to be between $50,000 and $60,000 for computer time and overtime costs. Larger, but unquantifiable, costs were anticipated for assisting thousands of users in escalation contract conversions and other applications, and for supplying former base indexes for an extended overlap period.

PREVAILING WAGE REGULATIONS

Question: The Administration has recommended major changes in the regulations regarding the "Prevailing Wage" used for Davis-Bacon Act determinations.

How will these changes effect the data collection costs of BLS?

Answer: Because the Bureau does not currently supply data for Davis-Bacon Act determinations, the recommended changes in the regulations regarding the "prevailing wage" will have no impact on our data collection costs. If, however, BLS is asked to conduct surveys for such determinations in the future, substantial costs would be incurred. No official estimate can be made until the Davis-Bacon requirements are specified to establish survey content, geographic scope, and timing of deliverables.

CPI HOMEOWNERSHIP

Question: While the homeownership component of the Consumer Price Index or All Urban Consumer (CPI-U) is to be revised in January 1983, the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) will not be changed until 1985.

What purpose is served by not changing both indices at the same time?

Answer: The time schedule for changing the CPI-U was determined by the time actually required to make the changes, by the requirement for pre-notification of users, and by the shorter history of the CPI-U. To understand why the time schedule for changing the CPI-W is different from that for changing the CPI-U, it is important to understand the differences between the two indexes. The CPI-U is a relatively new measure, begun in 1978. The CPI-W, on the other hand, has been compiled by the BLS for more than 50 years. The CPI-W is used extensively in escalation agreements in both the public and private sectors. Nearly all of the collective bargaining contracts which we know to contain cost-of-living adjustment (COLA) clauses use the CPI-W in the COLA formula. The majority of these agreements run for a period of three years. Some of them specify that in the event that the BLS changes the CPI-W materially, the parties would request the BLS to continue to supply the index as it was calculated before the change was made. Others contain provisions for reopening negotiations in the event that the agreed upon escalation measure is discontinued or materially changed. The CPI-W is important to these agreements, and BLS has in the past given advance notice before any major change in the CPI. A period of three years advance notice will allow the parties to deal with the CPI-W changes within their regular bargaining cycles, without disruptions and legal challenges because of a change in the index.

* Will there be any additional expense in 1983 and 1984 because different methodologies will be used?

Answer: The majority of the expense of changing the CPI-U to incorporate a rental equivalence measure of homeownership costs will be incurred in FY 1982 and the first quarter of FY 1983. During this time, the sample of rental units will be reweighted so that it represents homeowners, the new expenditure weight for homeownership will be calculated according to the established procedures for estimating CPI weights, and changes will be made to the CPI computer system so that it will support monthly production of the new index in complete item and geographic detail. After completion of these activities, the additional ongoing costs of supporting two homeownership methodologies is expected to be small. The primary reason for this is that the switch to a rental equivalence measure will not, at that stage, involve additional collection.

Current plans call for an augmentation of the rental unit sample so that it better represents the types of housing that are typically owner-occupied. This work, the funds for which are included in the Bureau's FY 1982 budget request, has begun and is expected to be completed early in FY 1985.

EXPANSION OF THE CURRENT POPULATION SURVEY

Question: In recent testimony before the Congress, Sar Levitan, who chaired the National Commission on Employment and Unemployment Statistics (NCEUS), criticized the Secretary of Labor's decision not to fund expansions of the Current Population Survey (CPS) and the establishment survey.

What inadequacies in the data are there currently, or will develop, as a result of the Secretary's decision?

Answer: The Secretary's decision simply means that no further improvement in the quality of the State and local area unemployment rates can be made. At the present time the estimates have an error rate of not more than 8 percent at a 6 percent unemployment rate. The National Commission's recommended goal of a 6.5 percent error rate would obviously yield higher quality data but it is also an expensive goal.

As far as the failure to fund the expansion of the establishment data--to provide current estimates for more SMSA's and more detailed industry estimates at the national level--these data are available from another source, the ES-202 report on Employment and Wages, which is a universe count of covered employment by industry for all States, counties and SMSA's. The principal limitation of these data, however, is that they are not available until approximately 7 months after the reference period.

The Secretary did support the recommendation concerning a review and modernization of the establishment survey program: This work is under way as a result of funding provided in the FY 1982 budget for the Bureau of Labor Statistics.

QUALITY OF STATISTICAL DATA

Question: The Bureau of Labor Statistics currently publishes very comprehensive data on the Labor Force.

While it is always argued that more data are better than fewer, are there not some series such as Area and Industry Wage Surveys and the Employment Cost Index which yield information that are not crucial for making major policy decisions?

Answer: I would not argue that "more data are better than fewer." The Bureau of Labor Statistics often assigns its resources to the maintenance of the quality and the timeliness of the data rather than to expansions or additions. Data on wages and labor cost are very important for current policy concerns. For example, one vital question facing the country is inflation, and wage data provide information that is crucial for analyzing inflation and for devising economic policy for dealing with it. Economists agree that the "underlying" rate of inflation will be determined by the rise in costs, and two-thirds to three-quarters of total costs in most sectors of the economy are those of labor. The BLS Employment Cost

Index (ECI) is the only available comprehensive measure of employment costs--wages plus employee benefits--and therefore provides current information on what is happening to this major element of costs.

Though the ECI is an excellent measure of national trends, the current sample size of the ECI (about 2,000 establishments) is too small to permit extracting very much disaggregate detail on industry, occupation and area. It cannot at present give, for example, sufficient information on the particular occupations or areas that might be experiencing the greatest increase in labor cost. One of the major functions of the Industry and Area Wage Surveys is to supplement data for the ECI, for they are designed to give information on wages, at detailed levels, for industry, area, and occupation. An integrated program of wage information requires information of the kind presented by all three surveys.

In addition, the Bureau's Industry and Area Wage Surveys have served Federal policymakers for many years and were initiated in direct response to major issues facing the government. Occupational pay data from the AWS are used by the Federal Government to make determinations of prevailing wage rates to be used in Federal contracts for services. The IWS hospital industry data is used by HHS to set medicare reasonable cost guidelines for some medical services. The Employment Standards Administration uses data from the AWS and SCA surveys to adjust disability pay for Federal workers. IWS data are routinely used as objective data in contract negotiations. GAO has recommended that the Federal Wage System also be based on the Bureau's area wage surveys.

The ECI is also being proposed for administrative uses. Recently, the President's Military Manpower Task Force recommended the use of the ECI for adjusting military pay: legislation is being drafted on this issue. GAO has recommended that the ECI be used in conjunction with the data from the Professional, Administrative, Technical and Clerical Pay Survey to set General Schedule employee salaries. The ECI has also been suggested as an alternative to the Consumer Price Index as an escalator for entitlement programs (e.g., Social Security, food stamps).

REDUCTIONS IN WAGE SURVEYS

Question: In November it was hinted that BLS would reduce the number of Area and Industry Wage Surveys.

Have you in fact done this, and what have been the consequences?

Answer: As part of the 12 percent reduction in 1982, BLS initiated its plan to reduce the industry wage and area wage surveys. Although the industry wage surveys were reduced by the full amount in FY 1982, in future years, both the AWS and IWS will be affected by this reduction of $1.1 million and 33 positions. In FY 1982 the number of industry surveys was reduced from 15 to 10. This reduction means that some industries have been dropped from the program; initiation of new industry wage surveys are being cancelled or delayed; and surveys conducted every 3 years are being shifted to a 5-year cycle whenever feasible.

CUTBACK IN EXECUTIVE DIRECTION STAFF

Question: In 1980, BLS had 277 staff for "Executive Direction and Staff Services." Even after all the recent budget cuts, you still have 254 administrative "overhead" staff. Can't you make a bigger reduction in Executive Direction staff?

Answer: The Executive Direction budget activity currently comprises 13 percent of the total BLS staff. Of the total number of 254 positions, approximately 100 positions are involved in what could be referred to as "overhead" functions such as personnel, budget, accounting, administrative support (mail, procurement, telephone and equipment services, building and work space management, etc.); and management information and support. Also included in this total is the Commissioner and her very small immediate office staff. The remaining Executive Direction positions are in the Offices of: (1) Field Operations, (2) Publications, (3) Statistical Operations, and (4) Research and Evaluation. These offices also carry out functions in direct support of the Bureau's major program areas (Prices, Wages, Employment, etc.) on a Bureau-wide basis, thus their location for budget presentation purposes in the Executive Direction budget activity.

JUSTIFICATION FOR STATISTICAL STAFF

The Bureau of Labor Statistics has 1,790 staff--about the same level as the billion-dollar National Cancer Institute, and the multi-billion dollar Employment and Training Administration. That seems like a small army of statisticians.

Question: What do these people really do?

Answer: The Bureau of Labor Statistics does not administer large-scale Federal grants or contracts as in the case of the National Cancer Institute or the Employment and Training Administration. Although some major BLS programs are supported by data collection conducted under contract with State agencies and the Bureau of the Census, these arrangements are limited to the BLS-790 Industry Employment Survey, the Occupational Employment Survey, Employment and Wages, the Current Population Survey, the Consumer Expenditure Survey, and the Point of Purchase Survey. Thus, for the majority of BLS programs including such large scale data collection programs as the monthly Consumer Price Index and the Producer Price Index Programs--two of the largest and most sensitive statistical programs conducted by the Federal Government--BLS itself directs and conducts the actual survey activities.

In terms of major functions across the Bureau's budget activities, BLS staff are allocated as follows:

BLS FY 1982 Positions by Major Function

Functions	Percent of Total Positions
(1) Program Management - Economic Review and Analysis	35%
(2) Statistical Design/Analysis	4%
(3) Data Collection	29%
(4) Data Processing	22%
(5) Administration and General Program Support	10%
TOTAL	100%

Question: Why is it really necessary, for instance, to have 343 people working on Labor Force Statistics and 729 people on Prices and Cost of Living?

Answer: Staffing in a given BLS budget activity reflects the person years required to carry out the program or survey functions which are funded in that area. The programs and staffing for each of the major programs in the Labor Force and Prices and Living Conditions areas are as follows:

Staffing in these various offices has been reduced in recent years and now is barely consistent with workload and operational requirements. Further reductions would place in serious jeopardy the Bureau's ability to meet the legal and administrative requirements to operate the agency as well as those imposed by such agencies as OMB, DOL, GAO, GSA, OPM as well as the Congress.

DATA COLLECTION STAFF

Question: Isn't most of the data collection actually done by other agencies and BLS staff primarily analyze and publish statistics?

Answer: No, this is not correct. As noted earlier, BLS does contract with State Employment Security agencies for collection of the industry employment data and other series and with the Bureau of the Census for the Current Population, Consumer Expenditure, and the Point of Purchase surveys. While these are major survey efforts, BLS itself collects all the remaining data in the Employment, Wage and Price areas. As noted earlier, this includes survey work on the Consumer and Producer Price Index programs, which are two of the largest and most important surveys conducted by the Federal Government.

In addition, it should also be noted that although data collection is a labor intensive activity, it is not the only activity: survey design, data processing, tabulation, data review and analysis and publication are all additional activities that must be carried out by BLS staff, even in those programs for which BLS contracts with other agencies for the data collection.

Question: Why isn't there any explanation in your budget justification material of why it takes a specified staffing level to produce certain statistics?

Answer: We are extremely anxious to provide supporting materials at whatever level of detail is necessary to support and explain staffing levels for BLS programs. Since staffing levels for BLS programs have already been developed and carefully scrutinized at all budget review levels of the executive branch, such justifications could be presented. They have not been included in the budget because BLS staffing levels are based on widely varying individual survey and program requirements: Aggregations of these data to budget activity levels would not be useful as justification materials to justify staffing for each detailed BLS program. For example, the Consumer Price Index program is actually comprised of a series of different surveys to collect such varied information as rents, property taxes, food prices and prices of other commodities and services. Each of these surveys has specific sample sizes which generate separate workload estimates for data collectors, processing clerks, programmers and systems analysts, economists, and statisticians. These estimates for the CPI program would be completely different than the estimates required to produce area or industry wage surveys, even though the same basic functions (sample design, data collection, data processing, data review and analysis, publications) are involved. In view of the potential volume of material involved, inclusion of such materials in the Congressional Budget submission would be an overwhelming mass of detail far in excess of the detail normally supplied by agencies in the formal budget documents. BLS staff, however, would be very pleased to present the additional supporting documents to the Committee at any time.

SUBCOMMITTEE RECESS

Senator SCHMITT. We will recess until 1 p.m., Thursday, April 29, when we will continue our hearings with the Secretary of Education.

Thank you very much.

Ms. NORWOOD. Thank you very much, Mr. Chairman.

[Whereupon, at 4 p.m., Thursday, April 22, the subcommittee was recessed, to reconvene at 1 p.m., Thursday, April 29.]

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1983

TUESDAY, APRIL 20, 1982

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 2:30 p.m. in room 1114, Everett McKinley Dirksen Senate Office Building, Hon. Harrison H. Schmitt (chairman) presiding.

Present: Senators Schmitt, Byrd, and Burdick.

Also present Senator Levin.

DEPARTMENT OF LABOR

STATEMENT OF HON. RAYMOND J. DONOVAN, SECRETARY OF LABOR

ACCOMPANIED BY:
ALFRED M. ZUCK, ASSISTANT SECRETARY OF LABOR FOR ADMINISTRATION AND MANAGEMENT
JANET L. NORWOOD, COMMISSIONER, BUREAU OF LABOR STATISTICS

SUBCOMMITTEE PROCEDURE

Senator SCHMITT. The hearing will come to order. Good morning, ladies and gentlemen.

Today we begin a week of hearings on fiscal 1983 budget requests for programs administered by the Department of Labor, with an overview presentation in this initial session from Secretary Donovan. We have already had the hearings for examining fiscal 1982 supplemental budget requests, including proposed deferrals, transfers, and bill language changes, but we may have further questions to update issues relating to the pending urgent supplemental appropriations bill.

Also appearing today will be Senator Levin a little bit later on to discuss the GAO report he commissioned on the work incentive program. Senator Levin agreed to release this report early in order that we may use these hearings to review the findings.

Mr. Secretary, we will interrupt you when Senator Levin arrives. If you will introduce your colleagues at this time and proceed with your opening statement or summary as you see fit.

Secretary DONOVAN. Thank you, Mr. Chairman. On my left is Mr. Al Zuck, Assistant Secretary for Administration and Management, and

Janet Norwood, Commissioner of the Bureau of Labor Statistics. In the interest of time, rather than read my remarks, I would just submit them for the record.

Senator SCHMITT. They will be included in the record.

[The statement follows:]

STATEMENT OF RAYMOND J. DONOVAN

Mr. Chairman and Members of the Committee:

I am appearing before you today to discuss the Department of Labor's Fiscal Year 1983 budget request. You will have the benefit of hearing from a number of Departmental staff over the next few days on details of our request. Today I would like to address some general principles upon which our budget is based.

First, this budget assumes the passage of certain changes in entitlement programs administered by the Department, specifically in the Federal Unemployment Benefits Account and in the Special Benefits Account, which pays Federal employees' disability compensation. These changes are proposed as part of the President's overall goal of reforming entitlements where inequities in benefits provided occur, in addition to eliminating certain work disincentives now inherent in these programs. The vast majority of the Department's entitlement programs, including basic Unemployment Insurance benefits and Black Lung, are provided for in this budget at levels consistent with legislative changes provided by the Congress in the past session.

Second, a later request in the fiscal 1983 budget will provide funding for job training programs to be delivered under a legislative framework that will replace the current Comprehensive Employment and Training Act (CETA) authority. This new program was transmitted to Congress on March 9. Its basic outlines include the concept of grants to States for training and employment services, the provision of a national level program for certain labor market groups, and the continuation of the Job Corps as a separate program. The President anticipates forwarding an official budget amendment for $2.4 billion as the base funding amount of this program.

Third, the Department will continue to carry out its varied legislative responsibilities for protection of American workers. We are asking for additional resources to carry out our important enforcement efforts, where needed. At the same time however, we are reviewing our various enforcement efforts, to insure that they are effective in targeting the worst cases, and are not unnecessarily burdensome on the workplace in terms of paperwork or regulatory requirements. We are also organizing our enforcement resources in more productive ways to better carry out our legislative responsibilities.

I would now like to say a word about our 1982 request for supplemental funding. Your Subcommittee has already heard testimony from Departmental staff on the specifics of our program supplemental requests. Since that hearing, the administration has forwarded its pay supplemental requests to Congress. The amounts requested for both pay and program supplementals are essential to the operation of Departmental programs through the remainder of this fiscal year. I urge your prompt consideration of them.

I will now discuss some of the details of our fiscal 1983 request. The Department's request to the Committee for fiscal 1983 is for $6.5 billion in Federal fund budget authority and $2.4 billion in trust fund transfer authority for a total of $8.9 billion in funding. In addition the President has stated his intention to forward to the Congress a 1983 budget amendment for the Mine Safety and Health Administration to provide $15 million for coal mine safety and health inspections. And as I mentioned above, the Administration also expects to forward a request of $2.4

2

billion for the Employment and Training Assistance appropriation, to fund the new legislative program.

In the Federal Unemployment Benefits and Allowances appropriations, the Administration request is $35 million. This request reflects savings anticipated from passage of three legislative proposals, which the Administration has recently sent or will shortly forward to Congress. These proposals include legislation to eliminate the additional Trade Readjustment Allowance benefit, provided beyond regular unemployment benefits, to those persons whose unemployment has been determined to be related to the adverse affects of imports. Training and employment services for these persons will be continued. This proposal is in line with the President's goals of removing the inequities in cash payments to individuals in similar situations, and eliminating the lengthy benefit receipt. The Administration will also be proposing to limit Redwood benefits to only those persons who lost their jobs as a direct result of the expansion of the Redwood National Park on or before December 31, 1978. Again, this is an effort to limit excess benefits and to eliminate disincentives to the seeking of new employment. Finally, the Administration has proposed changes to the unemployment compensation program for ex-servicemembers, that will limit eligibility for unemployment benefits only to those servicemembers involuntarily discharged due to demobilization, reduction-in-force or disability incurred while in service.

We are requesting $4.6 billion in the Advances appropriation to provide for general fund advances to the Unemployment Trust Fund ($4.5 billion) and to the Black Lung Disability Trust Fund ($62 million). The $674 million request for Black Lung reflects the legislation enacted last December amending the Black Lung Act.

In the Special Benefits Account, we are requesting $336 million for Federal Employees' Compensation Act (FECA) benefits which are paid to disabled employees. This amount assumes $58 million in savings related to the passage of certain amendments to the FECA legislation, which the Administration has recently transmitted to Congress. The Administration's new bill closely follows those proposals for FECA reform considered in the last session of Congress, which seek to eliminate current disincentives to return to gainful work and also to reduce the potential for abuse of the federal disability compensation system.

In the Grants to States appropriation, we are requesting $2.345 billion in funding for State administration of unemployment insurance and employment services in 1983. This request includes the Fiscal Year 1983 budget amendment for the Employment Service of $283 million, which the President forwarded to be consistent with the 1982 supplemental action he requested and signed into law on February 22.

Of the $2.4 billion expected to be requested for the Employment and Training Assistance appropriation for new employment and training programs, $1.8 billion will be for a new program of grants to states for operation of employment training programs under new legislative authority. Of the request, $387 million will be for the Job Corps program, which will be continued under the new legislation as a separate program. The remaining $200 million in the request will be for operation of a nationally-administered program to serve groups who have particular disadvantages in the labor market.

Finally, in the area of federal staffing for the Department, we are proposing salaries and expenses budgets which, in total, reduce Fiscal 1983 end-of-year employment levels in the Department by 107 persons. However, in certain key areas, we are seeking staffing increases. In the Labor-Management Services Administration, we are seeking additional funds for 150 new positions in the Labor-Management Standards Enforcement area. These additional personnel will increase our capacity to perform proper enforcement of our Landrum-Griffin Act responsibilities. We are also seeking funds for an additional 52 positions in the Office of Inspector General in order to have resources to complete all scheduled CETA audits and to perform needed investigations activity. In the Mine Safety and Health Administration, the President has announced he will submit a budget amendment for 1983 for $15 million to restore the coal enforcement activities to 1979 levels. In the Occupational Safety and Health Administration, we are seeking an increase of funds for operation of state on-site consultation programs. This increase is in line with our policy of helping business comply with basic safety and health standards.

In summary, I believe that we have a responsible budget request that allows us to carry out our basic mandates, but which also complies with the President's goals of general reduction in the rate of growth of federal spending and reduction in the size of the federal workforce. I will be happy to answer any questions you have.

GAO REPORT ON CETA DISCRETIONARY CONTRACTS

Senator SCHMITT. Did you wish to make a summary, or shall we proceed?

Secretary DONOVAN. I think we could proceed, Mr. Chairman.

Senator SCHMITT. Mr. Secretary, at the request of this subcommittee the General Accounting Office completed a special report last June reviewing a sample of CETA contracts awarded during the last 5 months of the Carter administration. This report found few formal records of award negotiations, a lack of comprehensive evaluations of awardees' past performance before award renewal, and little evidence of site monitoring.

Can you tell us what has been done in the last 2 years to resolve these problems in discretionary programs, including overcommitment of funds and improper contracting procedures?

Secretary DONOVAN. Well, when we took office I agreed with the GAO report. The office was frankly a managerial nightmare, and Assistant Secretary Angrisani has done yeoman's work in bringing some managerial controls to that office. We have made some major strides to improve the integrity of the national office grant funding process. Several other improvements will be effective within the next month.

The past record of every grantee is scrutinized before refunding occurs. We can supply for the record several case studies where refunding did not occur because of poor past performance.

We have separated grant funding from program management. The contracting function in ETA now reports to the finance administrator rather than the program office, and site monitoring plans have been developed. Forty-five key sites have been identified which directly provide service to enrollees or provide essential management support services.

We intend to visit each site at least once and more often if first visits indicate the need for follow-up.

Senator SCHMITT. That's one per year, Mr. Secretary.

Secretary DONOVAN. That's right.

In addition I should say that these grants or contracts have been and will continue to go on a competitive bid basis rather than a sole-source basis. I think that has been missing in the past.

SPECIAL TARGETED PROGRAM

Senator SCHMITT. Mr. Secretary, you are proposing $200 million for a new form of the Secretary's discretionary fund to take the place of existing programs for older workers, migrants, Indians, and special target groups such as veterans and trade-impacted workers.

Since these separate programs are currently funded at nearly $500 million, what activities do you expect will be squeezed out at the reduced level?

Secretary DONOVAN. We are studying that now, Mr. Chairman. You are correct that it was $500 million, and it is now $200 million. It is very difficult to make these choices. A study is underway for the allocation of those funds.

I should point out, though, in addition to the Secretary's discretionary funds, the bill that we have before the Senate now recognizes the need for service to other groups by allowing each State to use up to 10 percent of its allocated funds for the special labor market disadvantaged, such as older workers, in-school youth, displaced workers, and veterans. It is a difficult task, and we are trying to make it as fair and equitable as possible under these budgetary constraints.

Senator SCHMITT. Mr. Secretary, Senator Levin is here, and if my distinguished colleague from North Dakota will allow me, Senator Levin has requested to present a statement on the work incentive program.

Does the Senator from North Dakota have time?

Senator BURDICK. I would be glad to yield a few minutes.

Senator SCHMITT. OK. We will go ahead.

STATEMENT OF HON. CARL LEVIN, U.S. SENATOR FROM MICHIGAN

Senator LEVIN. I will be happy to reschedule this for later in the afternoon, if that is better for you.

Senator SCHMITT. I just wanted to be sure that members of the committee were not inconvenienced with your appearance at this time, Senator Levin.

Senator LEVIN. Thank you, Mr. Chairman. I appreciate the opportunity to appear and testify on this comprehensive study which I requested GAO to conduct on the work incentive program, the WIN program, which is jointly administered by the Labor Department and the Department of Health and Human Services. This study has been underway for almost 2 years now, and the GAO recently completed a draft of its initial assessment of the program. As a draft, their findings and recommendations do not yet have the benefit of comment from the two administering agencies.

Nonetheless, I wanted to share with this committee the preliminary findings of the GAO and alert you to the continuing work of GAO in this area.

We asked the GAO to answer several specific questions about the WIN program:

First, what portion of AFDC recipients actually receive help from WIN?

Second, what portion of WIN participants achieved self-sufficiency and no longer need AFDC?

Third, are WIN performance goals being achieved? Is the program working?

In response to these questions the GAO has conducted extensive onsite interviews in 40 States with State and local WIN and AFDC officials in about 150 offices and with WIN participants and AFDC recipients, totaling about 2,200 people.

These are the principal findings to date:

First, of the 1.6 million recipients legally required to register to participate in the program, only one-half were chosen to actually participate in the program and receive services and assistance. According to State and local WIN officials, limited Federal funds and limited job markets are the two major factors for such a low participation rate. As a result, about 800,000 of the eligible WIN registrants will not be enrolled in any component of the WIN program and will receive no assurances that they will ever be selected.

Second, because the WIN program cannot serve all who are eligible and register, local WIN staffs carefully screen those who do participate. Generally, WIN program legislation and the WIN funding formula encourage WIN to consider a registrant's employability potential in selecting participants. As a result, WIN staff seem to direct their efforts toward those most likely to succeed and those who need the least amount of help. The outcome is that most WIN participants are persons most likely to have sufficient skills and experience to find work on their own.

WIN statistics bear this fact out. In fiscal year 1980, 71 percent of WIN participants who found jobs reported that they found them on their own; 72 percent of those who found their own jobs gave little or no credit to the WIN program for their employment and claim that they were not given help in identifying a specific job or referred to any employment service.

It is also noteworthy that of the WIN participants who found jobs only 35 percent found jobs which paid enough to eliminate their AFDC grant eligibility.

And third, improvements in the way the WIN program measures its own success are also needed to more accurately reflect its actual accomplishments.

I am going to skip a portion of this statement. It sets forth that some of the accounting methods of the WIN program exaggerate the benefits. The procedures include double counting of participants and so forth.

Senator SCHMITT. That will be included in the record.

HELP FOR AFDC RECIPIENTS

Senator LEVIN. For a program designed to help eligible AFDC recipients find and keep jobs, these preliminary findings are not very encouraging. The task WIN was designed to accomplish is a very difficult one indeed, particularly in today's tight job market and declining economy. But the need for programs of this type could never be greater than it is now. We all share a commitment to help AFDC recipients find and keep jobs so that they can achieve self-sufficiency.

It is simply not enough that a program to help people find jobs purposely selects only those participants who are most capable of finding their own jobs. It is also misleading that the WIN program would then claim credit and substantial welfare savings from jobs which were found without any actual assistance from WIN.

The GAO's preliminary findings show that improvement in design, in participant selection, and performance standards are badly needed so that the WIN program can achieve its goals, and that, I hope, is what we are after—Mr. Chairman, I feel this very strongly—making this program meet real needs, not dismantling or weakening it despite our disappointments.

Although these findings have not been subject to agency comment yet, I would like to offer several specific suggestions for improving the WIN program.

First, the program's design should be refined to include participants who have varying job experience and education. Perhaps two sets of services should be provided, one set for those with the greatest employability and with the least need, and another for those who have the lowest skills and experience, who need the most assistance.

Second, those registrants who are never selected to participate should be promptly notified of that effect so that false hopes of help will not be fostered as they are now.

Third, WIN's own reporting and performance evaluation methods should be strengthened to insure a more realistic appraisal of the program's impact. At present, a 30-day job retention period is all that's required for a successful job placement, although GAO found that over half of WIN placements lost their jobs within 6 months. A longer retention period might result in a better measure of WIN accomplishments.

Ways of eliminating double counting of jobs obtained by the same person should be instituted. Similarly, welfare savings should be calculated in a way which reflects that many who find jobs may end up back on AFDC before year's end.

Finally, WIN's count of job placements should clearly differentiate between those participants who found their jobs on their own and those who found their jobs with direct WIN assistance.

The GAO is continuing its analysis of the program, and will next focus on the services WIN provides and determine which of these services are most helpful to WIN participants. The specifics of this and future analyses are still being developed by the GAO. They have amassed a mammoth amount of data and the potential for further analysis is tremendous. I know that they would welcome any suggestions for future study which members of the committee or the administration would offer.

Again, I appreciate the opportunity to appear this afternoon, and I have offered these comments in an effort to be constructive and offer a constructive critique of this report, again, not in an effort to weaken or dismantle it, nor indeed as a criticism of those who administer the program—I know they are doing the best they can—but in an effort to see if we can't strengthen both the services provided by the program and to try to improve the accuracy by which the program can be reported so we can assess it better and see how we can strengthen it.

Senator SCHMITT. Senator, the committee wishes to thank you for your candor and for making this draft report available to us. At this point in our hearing schedule it is going to be most helpful.

Certainly we have seen in some specific portions of this program some very remarkable results in bringing people off the AFDC rolls into useful employment. The overall record, though, is not much to crow about as yet. But as you say, that doesn't mean the need doesn't exist, and let's find ways to try to satisy that need.

Senator Burdick, did you have any questions?

Senator BURDICK. I want to thank the witness for his contribution.

Senator LEVIN. I also thank the witnesses as well as the committee for the inconvenience.

Senator SCHMITT. Thank you.

Now I would ask Secretary Donovan if he wants to make any comments at this time. I realize that you most certainly are preparing a response to the GAO report for formal transmittal. I would be happy to hear your comments at this time. Maybe Senator Levin would like to hear them also.

Secretary DONOVAN. Well, we have just gotten the report, as you know, Mr. Chairman, and are examining it.

Generally from our first view of it, the findings seem to be accurate. But we will have to examine it more closely before we can be very much more definitive than that.

Senator SCHMITT. Thank you, Mr. Secretary, and thank you, Senator Levin.

Senator LEVIN. Thank you.

PREPARED STATEMENT

Senator SCHMITT. Your prepared statement will be inserted in the record at this point.

[The statement follows:]

STATEMENT OF SENATOR CARL LEVIN

MR. CHAIRMAN:

I appreciate this opportunity to appear and discuss briefly a comprehensive study which I requested the General Accounting Office (GAO) to conduct on the Work Incentive (WIN) program which is jointly administered by the Labor Department and the Department of Health and Human Services. The study has been underway for almost two years now, and the GAO recently completed a draft of its initial assessment of the program. As a draft, their findings and recommendations do not yet have the benefit of comment from the two administering agencies. Nonetheless, , I wanted to share their preliminary findings with the Committee, and alert you to their continuing work in this important area.

I wanted the GAO to answer several specific questions about the WIN program:

- What portion of AFDC recipients actually receive help from WIN?
- What portion of WIN participants achieved self-sufficiency and no longer need AFDC?
- Are WIN performance goals being achieved -- is the progran working?

In response to these questions, the GAO has conducted extensive on-site interviews in 40 states with state, local WIN and AFDC officials (in 150 offices), with WIN participants and AFDC recipients (totaling 2,200).

These are the principal findings to date:

1. Of the 1.6 million recipients legally required to register to participate in the program, only one-half were chosen to actually participate in the program and receive services and assistance. According to state and local WIN officials, limited Federal funds and limited job markets are the two major factors for such a low participation rate. As a result, nearly half (798,000) of eligible WIN registrants will not be enrolled in any component of the WIN program and will receive no assurances that they will ever be selected to do so.

2. Because the WIN program cannot serve all who are eligible and register, local WIN staffs carefully screen those who do participate. Generally, WIN program legislation and the WIN funding formula, encourage WIN to consider a registrant's employability potential in selecting participants. As a result, then, WIN staff seem to direct their efforts toward those most likely to succeed and those who need the least amount of help. The outcome is that most WIN participants are persons most likely to have sufficient skills and experience to find work on their own.

WIN statistics bear this fact out: in fiscal year 1980, 71 percent of WIN participants who found jobs reported that they found them on their own.

And, 72 percent of those who found their own jobs gave little or no credit to the WIN program for their employment, and claim that they were not given help in identifying a specific job or referred to any employment service.

It is also noteworthy that of the WIN participants who found jobs, only thirty-five per cent found jobs which paid enough to eliminate their AFDC grant eligibility.

3. Improvements in the way the WIN program measures its own success are also needed to more accurately reflect its actual accomplishments.

One of the key indicators of WIN performance, in the Congress' eyes, is the amount of welfare savings achieved through WIN. For fiscal years 1979, 1980, and 1981, the reported savings were $599 million, $632 million, and $760 million, respectively. However, the GAO study found that these savings were overestimated by about 50 percent - not, I caution, in any purposeful way, but simply because of the way the calculations are reached. Those calculations are based on the number of WIN participants who get and keep jobs for thirty days, using that to annualize monthly reductions in AFDC payments.

The GAO found that under existing procedures, WIN officials may double count participants who get more than one job in year. In addition, annualizing welfare savings adds to the overstatement because over half of WIN placements lost their jobs in the first six months. Finally, and significantly, WIN claims of welfare savings also include those WIN participants who found their own jobs without direct assistance from WIN.

For a program designed to help eligible AFDC recipients find and keep jobs, these preliminary findings are not very encouraging. The task WIN was designed to accomplish is a very difficult one indeed, particularly in today's tight job market and declining economy. But the need for programs of this type could never be greater than it is now. We all share a commitment to help AFDC recipients find and keep jobs so that they can achieve self-sufficiency.

It is simply not enough that a program to help people find jobs purposely selects only those participants who are most capable of finding their own jobs. It is also misleading that the WIN program would then claim credit and substantial welfare savings from jobs which were found without any actual assistance from WIN. The GAO's preliminary findings show that improvement in design, in participant selection, and performance standards are badly needed so that the WIN program can achieve its goals. And that, I hope, is what we are after -- making this program meet real needs -- not dismantling or weakening it despite our disappointments.

Although these findings have not been subject to agency comment, I would like to offer several specific suggestions for improving the WIN program. First, the program's design should be refined to include participants who have varying job experience and education. Perhaps two sets of services should be provided participants; one set for those with the greatest employability and with the least need, and another for those who have the lowest skills and experience, who need the most assistance. Second, those registrants who are never selected to participate should be promptly notified to that effect so that false hopes of help will not be fostered as they are now. Third, WIN's own reporting and performance evaluation methods must be strengthened to ensure a more realistic appraisal of the program's impact. At present, a 30-day job retention period is all that's required for a "successful" job placement, although the GAO found that over half of WIN placements lost their jobs within six months. A longer retention period might result in a better measure of WIN accomplishments. Ways of eliminating double counting of jobs obtained by the same person should be instituted. Similarly, welfare savings should be calculated in a way which reflects that many who find jobs may end up back on AFDC before year's end. Finally, WIN's count of job placements should clearly differentiate between those participants who found their jobs on their own, and those who found their jobs with direct WIN assistance.

The GAO is continuing its analysis of the program, and will next focus on the services WIN provides and determine which of these services are most helpful to WIN participants. The specifics of this and future analyses are still being developed by the GAO. They have amassed a mammoth amount of data and the potential for further analysis is tremendous. I would welcome any suggestions for future study which any members of the Committee would offer.

Again, I appreciate the opportunity to appear this afternoon and I intend to continue to share with you the results of GAO's work on this program. I hope that this information will be useful as you consider ways to improve the WIN program.

RESPONSE TO GAO REPORT

Senator SCHMITT. When would you expect, Mr. Secretary, to have developed your response to this report?

Secretary DONOVAN. On the heels of my slight comment on the GAO report, I would like to, if I may, reiterate the President's and the administration's position. I believe it could be ready in 3 to 4 weeks, a report on the GAO report. As you are aware, the administration proposes to replace the categorical WIN program with a combination of mandatory community work experience programs. The Job Training Act of 1982 is one of its features. It specifically addresses itself to the AFDC situation as well as the Human Services block grants and other block grants. States will have the option of carrying out WIN type activities under these alternative legislative initiatives and funding sources. This approach is consistent with our interest in giving States greater autonomy and responsibility for social programs.

I thought I would get that on the record, Mr. Chairman, and we will get our findings on the GAO report to you as quickly as possible.

EFFECT OF ADDITIONAL FUNDING ON WIN

Senator SCHMITT. Do you have any reason to think the WIN program would work better if it had more money?

Secretary DONOVAN. I think it would work better at the State level than it has in the past through Human Services block grants, and I think the Job Training Act of 1982 could make a substantive contribution to AFDC families in getting the training that they really need to match jobs that are out there in the workplace.

ABILITY OF STATES TO HANDLE WIN-TYPE PROGRAM

Senator SCHMITT. Do you have evidence to believe that the States are presently configured in terms of their organizational structure or governmental structure to handle this kind of approach?

Secretary DONOVAN. I would say this, Mr. Chairman. There are many successful PIC's out in the field. We want heavy contributions and input by the private sector in the design and implementation of these training programs. I truly believe that we might have a breakthrough here, after all of the attention that has been paid under CETA, as to what did not work. I think bringing it to the local level and having a deep involvement and commitment by the private sector is truly the way to go, and I believe that this program we have suggested has a better chance than any other CETA program I have seen, to work and work well.

Senator SCHMITT. Well, we know from this committee's analysis that in the programs we know that have worked—and some of these are outside of WIN; some were funded out of the national programs of the CETA overall effort—there seems to be a local component to their success. And that's a gut feeling rather than an analytical feeling, but nevertheless, that at least would seem to justify the conclusion you have just expressed. But the committee, as we explore the GAO report and as we look at both successes and nonsuccesses in the CETA area for moving people off the public assistance rolls and into employment, will try to join with you in coming to a conclusion whether that really is the proper way to handle this program.

Senator Burdick.

TERMINATION OF OLDER AMERICANS PROGRAM

Senator BURDICK. Mr. Secretary, I have received hundreds of letters protesting the administration's proposed termination of the senior community service employment program which funds the green thumb program. In my State and nationally this program has been highly successful in placing thousands of older workers in community service jobs, and also in the private sector. And now at a time of high unemployment, reduced public assistance programs and talk of cutting back on social security benefits, the administration wants to eliminate the program.

First, has the administration calculated the cost of terminating this program in terms of increases in public assistance that may result and in terms of the work these people do that will have to be done by other agencies and personnel? Have you made any such calculations?

Secretary DONOVAN. I don't know whether that was done at OMB, Senator Burdick, but I have not given up the fight to get funding for those older Americans. Within the bounds of the budget, I continue to fight that battle, and I am an optimist; I think I have a fair chance of winning it.

Senator BURDICK. You added a little qualification: "Within the bounds of the budget." Can we also do a little work there, too?

Secretary DONOVAN. Well, I would say this. Within the $2.4 billion I hope to be able to get the funding for that program at or near last year's level. This has been something I have been constantly working on at OMB for several months. I still have hopes that I will succeed.

Senator BURDICK. Well, I am certainly glad to hear that.

REDUCTION IN STATE EMPLOYMENT SERVICES

On another subject, can you briefly describe to the subcommittee the administration's budget recommendation for grants to State programs which funds much of the work done by each State's employment service office? Specifically, please share with us the percentage reduction from the 1982 budget and how this breaks down in terms of programs and personnel, if you can.

Secretary DONOVAN. Our projected staff levels, Senator, for the employment service are between 23,300 and 24,800 staff-years in 1982, and 21,800 staff-years in 1983. It would cost an additional $143 million in 1982, an additional $274 million in 1983 to provide for a 30,000 staff-year level.

We did come up with a supplemental, as you are aware, and I believe relieved that terrible situation that existed there for about a month.

Senator BURDICK. I am told that my State of North Dakota stands to lose about $500,000 under the present budget. This reduction would probably mean curtailment of travel to rural areas by job interviewers, less time for the job service employee to talk to employers about positions, longer waiting time for job seekers, and generally a less efficient operation. Ironically, the cuts come at a time of real unemployment problems, when the employment services are most desperately needed. For example, the falling market price of oil has significantly slowed the energy development in western North Dakota and has resulted in a new group of unemployed.

Mr. Secretary, it does not make sense to be cutting back on the employment services at this time. I believe that Congress made that clear when it recently restored funding for this purpose. What is the administration's budget recommendation, Mr. Secretary?

Secretary DONOVAN. Well, as I just read to you, our recommendations are the levels of 21,800, and we feel that that is adequate. If it is not, it proves not to be, we will review it again.

Senator BURDICK. Thank you very much.

Secretary DONOVAN. Thank you.

EFFECT OF OMB CIRCULAR A-10 ON CONGRESSIONAL RELATIONS

Senator SCHMITT. Thank you, Senator.

Mr. Secretary, I am sure you are familiar with the March 29, 1982, memorandum to the heads of executive departments in which OMB Director Stockman ordered witnesses to refrain from providing plans for the use of appropriations that exceed the President's request.

I recognize the motivations behind this. However, the committee in its deliberations is very much dependent on having the assistance of departments, for example, to provide information, technical information on the impact of budget amendments proposed by Senators. We can still expect to get that kind of assistance, can we not?

Secretary DONOVAN. Yes, Senator. I will be as frank as I have always been.

Senator SCHMITT. We would appreciate that. We understand what Mr. Stockman is trying to do, but we also must insist that we have the data necessary to fully evaluate the President's budget, and sometimes information about proposals to the OMB and others are necessary, and we would expect that the situation that existed prior to that memorandum will continue to exist after it.

Secretary DONOVAN. I am reminded not only not to be hesitant, but to speak frankly. I don't believe that that is the administration's position and will get the issue clarified.

STATUS OF VES REORGANIZATION

Senator SCHMITT. I don't believe it either.

You now have an Assistant Secretary for Veterans Employment, and you have started transferring responsiblity of the veterans employment service to this office. What is the status of this reorganization?

Secretary DONOVAN. Well, I am proud to say that Mr. Plowden has agreed to be our Assisant Secretary. I think he is an outstanding one. We have had many meetings on the subject of these transfers. We have agreed—well, first, let's say what we agreed not to do at this stage, for very practical reasons. After deep discussion with Assistant Secretary Plowden and LMSA staff, we have decided not to move the veterans reemployment rights program out of LMSA, at least at this time, mainly because of budgetary reasons and for the reason that it is working well. It doesn't mean that that is a decision that will not be reviewed. I think it should. Eventually all of these programs should be under the Assistant Secretary for Veterans Employment, in my view. But under the present set of circumstances, I made the decision that the program should stay at LMSA.

What we have transferred over is the Veterans Employment Service from the Employment and Training Administration.

I would compliment Mr. Plowden for his understanding. I know he is under a lot of pressure to get these programs all within his jurisdiction. I applaud that, and I want it too, but the timing and this budgetary atmosphere that we are in is preventing me from making that decision at this time.

Senator SCHMITT. I must admit I don't fully understand that. I respect your judgment, when you have a program that is working, that you may hesitate to uproot at least the management of that program and move it to another place. But nevertheless, I think it is of general interest to have these programs consolidated at some time in the future. I hope you will continue to evaluate that as you have indicated you will.

Secretary DONOVAN. I will.

Senator SCHMITT. If I heard you correctly, you would anticipate they would all be joined together in the future, but you are just looking for the best time to do that?

Secretary DONOVAN. That is exactly right.

STATUS OF PROPOSED EMPLOYMENT AND TRAINING LEGISLATION

Senator SCHMITT. What is the current status, Mr. Secretary, of the administration's new legislation to replace the expiring Comprehensive Employment and Training Act?

Secretary DONOVAN. Well, over the past 7 months there have been tremendous efforts on the part of Assistant Secretary Angrisani, and the entire department, for that matter, knowing that we had the historic opportunity along with Congress to have a new jobs training bill. It has been submitted to the Senate. There are several other bills also submitted. We attempted to have a consensus bill with Senator Quayle and Senator Kennedy. That has not progressed the way we would have liked.

The President's bill is different in that it approaches training in CETA with an eye to the people to be trained rather than the organizations that in the past have been doing the training.

One of the key factors is to deliver more training dollars than has happened in the past. Our view was to deliver as much as 75 cents on each dollar in true training, where historically out of the CETA dollar 18 to 20 cents was in the training mode. That is a major departure, in my view, and an important one.

The other is a block grant to the State where the governor and a strong advisory board made up of a majority of private sector members will be in on the design and the execution of the training portions of their responsibilities.

One of the major issues is training to match jobs that are there or that will be there. I think that has been one of the problems in CETA in the past. There was training given, and after the training period there were no jobs to fit that skill. I think part of that reason, or a majority of the cause for that, is a lack of communication with those people who have the jobs, that is, the private sector.

One other major difference, we contend, and I think can prove, is that stipends which have been paid in the past in many of the programs are not necessary to the success of the training program.

There are many examples of that, even in the old CETA, and it is one of the major principles of the President's bill, and the major difference, I would say, between our bill and the Quayle-Kennedy bill.

Those are the general highlights. I believe the Quayle-Kennedy bill is being marked up today.

INTERIM EMPLOYMENT AND TRAINING OPERATION

Senator SCHMITT. If the legislation is not enacted by the time that we must go to print, as it were, what recommendations do you have for continued funding of the existing CETA programs for fiscal 1983?

Secretary DONOVAN. Well, we had a transition period in the bill anyway, Senator, to enable the block grant to take effect so that we would be operating basically under the old CETA for another year.

Senator SCHMITT. Would that continue funding levels as presented in the budget request?

Secretary DONOVAN. That is what we would prefer.

CONTINUATION OF OLDER AMERICANS PROGRAM

Senator SCHMITT. We may have another question for you on that in a moment.

On the issue of jobs for the elderly, which was touched on by Senator Burdick, 13 of the 15 members of the Senate Special Committee on Aging have written to the Appropriations Committee in support of continuing the community service employment for older Americans. This program currently provides 54,200 jobs for persons 55 years old and over.

They point out that half the jobs are in senior centers and nutrition sites, and services would be severely damaged if these jobs were eliminated.

In addition to what you said to Senator Burdick, have you assessed the impact of terminating these jobs on services provided by other Older Americans Act programs, such as nutrition sites and senior centers?

Secretary DONOVAN. I have not, but I see an obvious impact.

Senator SCHMITT. Could you ask your staff to take a look at that and provide us with some information for the record?

Secretary DONOVAN. Surely.

[The information follows:]

IMPACT OF LOSS OF SCSEP JOBS

Our records indicate that about half of the SCSEP jobs directly benefit the elderly, including 5,028 in senior citizen centers and 7,086 in nutrition programs. We believe that the impact of the loss of these services will be alleviated by such measures as increased support from other titles of the Older Americans Act, more volunteers, greater support from local government sources and private donations.

REDUCTIONS IN CETA PROGRAM

Senator SCHMITT. Mr. Secretary, back on the new legislation for job training, what specific programs would be cut to go from the current CETA level of $3.7 billion to $2.4 billion in fiscal 1983, which is the transition year?

Secretary DONOVAN. We would have to give you that at a later date, Mr. Chairman.

Senator SCHMITT. If you would supply that for the record we would appreciate it.

Secretary DONOVAN. We will.

[The information follows:]

PROGRAMS INCLUDED IN JOB TRAINING ACT

Under the Job Training Act of 1982, The administration is proposing to eliminate categorical programs serving specific segments of the unemployed and focus on training of the economically disadvantaged under a block grant approach which will assist these individuals in obtaining private sector employment, and therefore, in becoming self-sufficient. Since the proposed legislation will not be paying training allowances or stipends, in order to maximize the dollars spent on skill training, those CETA programs which relied on work experience or public service employment would be eliminated. These include the Summer Youth Employment Program, the Youth Community Conservation Improvement Program, the Young Adult Conservation Corps, the Youth Employment and Training Program. Both the Work Incentive Program and the Older Americans Program, which are funded in 1982 under separate appropriations, will be subsumed under the new legislation. The target groups which these programs serve will be the groups upon which training under the new legislation will focus.

EVALUATION OF YOUTH PROGRAMS

Senator SCHMITT. Mr. Secretary, in the youth programs, this committee has been trying to find out what in those programs has worked best. There have been additional funds spent on youth employment since our last discussion with you. Have you learned any more about what works in those programs.

Secretary DONOVAN. Well, somewhat more. Training for low-income youth, both on the job and in the classroom, has significant positive effects, we find, on the participants' post-program earnings. In addition, those who complete longer term training, coupled with remedial education—and I stress that—and job placement assistance—and I stress that also—benefit more substantially than do those who participate in the shorter projects or drop out. I think that is obvious.

We have also found that work experience is not an effective springboard to unsubsidized employment. That is why we have designed our new training program with such stress on the private sector and stress on more training dollars in the private sector where the jobs are.

I think there has been tremendous disappointment by some of the people going through these programs who come out thinking they have a marketable skill and they do not. That is a double tragedy, a waste of dollars, and tearing of the heart and the hope from the participants.

Senator SCHMITT. Do you have any current evaluations of the youth employment programs underway?

Mr. ZUCK. There are, Mr. Chairman, a series of evaluation reports that were done under the Youth Employment and Demonstration Act, and we can provide that information to the committee. There were a whole array of studies, though, looking at various aspects of youth unemployment and employment and training programs.

Senator SCHMITT. Do you have a summary of that?

Mr. ZUCK. I believe we do, and we can make that available to you.

Senator SCHMITT. That would be helpful. We are trying to evaluate those programs ourselves. There is a tendency sometimes just to keep funding things because they are there in the budget, and one thing I have tried to do as Chairman is find out what works and what doesn't and see if we can learn anything from that. That is why we continue to argue with the Administration on the Job Corps program. We don't need the entire mass or volumes of studies. There have probably been too many of those. But we do need some evaluations and statistics and data on which to base a judgment on what seems to work.

[CLERK'S NOTE.—A copy of the 1980 Employment and Training Report to the President and other information on youth employment program evaluations is located in the subcommittee's files.]

[The information follows:]

YOUTH EVALUATIONS

The CETA Amendments of 1978 required an evaluation of all programs and activities conducted under the act, including information derived from evaluations provided for in section 313 of the legislation. The 1980 Employment and Training Report of the President, which is being sent separately to the committee, contains the most up-to-date official findings of evaluations of youth programs. The following are pertinent sections of the 1980 report ("Employment and Training Evaluation Report," published in the 1980 Employment and Training Report of the President, pages 145 to 191) related to youth research and evaluations:

Background and Introductory Material on Youth: Page 148, pages 151–153 (New Youth Cohort), page 163 (Job Corps); Under Research and Development Plan for Fiscal 1981, page 170 (New NLS Cohort); Under Evaluation Study Findings, page 175 (Youth and the Local Employment Agenda); Under Policy and Program Recommendations, page 183 (Youth Programs). The 1981 Employment and Training Report of the President is currently in the clearance process and will be available for distribution shortly.

Also provided to the committee under separate cover is a complete listing of research findings associated with youth employment and training problems, policies and programs conducted under the Youth Employment and Demonstration Projects Act of 1977 (YEDPA). YEDPA authorized several initiatives to increase the level and quality of services provided to disadvantaged youth and to test how well various program approaches accomplished this objective.

CHANGE IN UNEMPLOYMENT INSURANCE BENEFITS

Senator SCHMITT. Last week OMB estimated that outlays for unemployment benefits would be $2.2 billion less than the level projected in the President's budget for fiscal years 1982 and 1983, even though no change was made in the estimate that unemployment would average 8.9 percent in fiscal 1983.

What is the reason for this change from the estimates submitted to Congress in January?

Secretary DONOVAN. Well, in the April update we lowered our estimate of State unemployment benefits by $2.2 billion, $1.6 billion in fiscal 1982, and $600 million in 1983. This resulted in a reduction in outlays from advances account of $1.2 billion, $700 million in 1982, $500 million in 1983. Of the amount, $500 million of the 1982 reduction is attributable to lower projected outlays for the Federal share of extended benefits. The remaining $200 million in fiscal 1982 and the entire $500 million reduction in 1983 is due to a lower estimate of State loans.

Although the economic assumptions for the April update were the same as those used for our January budget submission, we did adjust the relationship between the insured and total unemployment rates to reflect the most recent experience. The insured unemployment rate in fiscal 1982 was lowered from 4.7 percent to 4.2; in 1983 it was lowered from 4.5 to 4.4. This produced lower estimates for extended benefits in State loans and thus lowered the advances outlay.

Senator SCHMITT. I understand the numbers, but I don't understand what is behind them. What has caused these original numbers to be wrong, or at least revised?

Secretary DONOVAN. I would ask Ms. Norwood to comment on this. It is somewhat complicated. Maybe she can help.

Senator SCHMITT. Ms. Norwood, does it have to do with the way the numbers are calculated or the data reported? Or is there some fundamental change in the economy?

Ms. NORWOOD. It is partly due, I believe, Mr. Chairman, to some of the legislation that has been passed by the Congress which has tended in the last couple of years to tighten some of the eligibility requirements and to tighten the administration of the programs.

In general, there have been somewhat smaller proportions of people who have been in the continued claims figures than we would have anticipated, based on earlier legislation and earlier liability requirements.

Senator SCHMITT. How much less will be needed for fiscal 1983 Federal loans to the unemployment trust fund due to these revised outlay estimates?

Mr. ZUCK. The projected or estimated figure was $500 million.

Senator SCHMITT. And that is for 1983, and for 1982. I have just been shown a note that indicates it may be $700 million.

Mr. ZUCK. That is correct—$700 million. Essentially, the situation, Mr. Chairman, is that the actual expenditures, the payment of benefits, is lower than we had earlier estimated.

REASON FOR REDUCED UI ESTIMATES

Senator SCHMITT. Do you think that is because of the indirect impacts of actions taken by the Congress last year?

Mr. ZUCK. We think that is a major reason. We are at a loss to know exactly why it has happened, but the historic relationships for a decade or more between insured unemployment, which results in unemployment compensation payments, and total unemployment has begun to change.

Senator SCHMITT. Is that because we are getting a different category of people being estimated as being unemployed so that the ratio changes?

Ms. NORWOOD. No; I don't think so entirely. Of course, in order to be eligible for unemployment insurance, Mr. Chairman, one has to, as you know, have worked for a certain period of time. We have had a number of occurrences. First of all, there have been people who have lost their jobs, the job losers who have been out of work for a while, gotten their eligibility, gotten payments, and then gone back to work.

They may have some spells of unemployment after that period and may not be eligible again. And as you recall, we have had one recession following on the back of another one in 1980. So there may be some problem there.

Basically the young people and the new entrants and reentrants to the labor force would tend not to have UI eligibility, certainly not so much as people who have actually lost their last jobs.

EMPLOYMENT-POPULATION RATIO

Senator SCHMITT. Ms. Norwood, I have seen some recent information indicating that as a percentage of work force we are at almost an all-time high of employment. The number I have seen is 75 percent, as compared to 59 percent, which was the high reached in 1979. Is that a meaningful phrase to you, percentage of work force, and if so, what does it mean?

Ms. NORWOOD. Yes; you are referring to the employment/population ratio, the proportion of the civilian, noninstitutional population 16 years and over who actually are employed. The population, of course, has been increasing. Our problem is that as the population increases we need more and more jobs in order to employ the people who are born and grow up and go into the labor force.

DEFINITIONAL BASIS FOR UNEMPLOYMENT RATE

Senator SCHMITT. Have you reached any new conclusions on the way in which the unemployment rate is calculated relative to those people that are really unemployed or ones who are unemployed more or less by choice or a marginal part of the work force or in fact may be employed in off-the-book jobs?

Ms. NORWOOD. The official unemployment rate is based on an activity definition. Someone must be not working, be available for work during the survey week, and have looked for work during the preceding 4 weeks.

There are those who believe that the unemployment rate should include only those who have been unemployed for 15 weeks or longer, or only adults, and therefore that the unemployment rate is too high. There are others who believe that those people who are not looking for work because they feel none is available, the so-called discouraged workers, should be added to the unemployment rate, or that those who are employed only on a part-time basis because they can't find a full-time job, at least a portion of those should be added to the unemployment rate, and therefore the unemployment rate is too low.

The U.S. Government has had two review commissions: one in the 1960's and another review commission appointed by President Carter. Those commissions have reviewed the definition and have felt that the official definition that is now used should be retained as essentially a compromise among all of the various possible definitions.

We do publish every month a series of unemployment rates, which we call U-1 through U-7, and they differ very little in trend, but they do differ in terms of the level.

CURRENT UNEMPLOYMENT FORMULA

Senator SCHMITT. How long has the current formula, if you will, been in use?

Ms. NORWOOD. Since 1940.

Senator SCHMITT. There has been no significant change?

Ms. NORWOOD. There have been changes, Mr. Chairman, but the basic activity definition is the same. We have made some changes. We used to count people who were 14 years old; now we count people who are 16 years and older. And there have been changes in the survey techniques.

In general, however, we have followed the international definitions. Other countries have for the most part the same approaches. We have felt in the United States that it was better to have the unemployment rate as specific and as activity related as possible. That is why we excluded the discouraged workers, for example.

ESTIMATES OF OFF-THE-BOOK JOBS

Senator SCHMITT. What about the off-the-book jobs? Is there any way that you can make estimates of what percentage of the work force is employed on off-the-book jobs?

Ms. NORWOOD. No; there really isn't. We have looked at that question. I think there are several points to be made. First, we hear lots of figures that seem to be very large about the amount of income that is lost because of off-book work. I would point out to you that income is something different from employment, and that one cannot make any judgments about the effect of employment or unemployment based on the assertions about income.

The Bureau of Labor Statistics is undertaking a little survey to try to find out what studies have been done on this subject and what methodologies have been used. We're pretty much aware of the studies that have been done, and I can tell you we are not aware of anything that we think provides very much light on this. There are a lot of estimates. There are a lot of guesses. This is a subject that is of very great importance, of course, and important not just to this country, but to most of the other countries of the world.

I chair a working party of the OECD which has this as one of its items on the agenda, to try to see how we can learn from the experience of other countries' ways of getting at this.

I do think it is important to understand that we have two basic surveys of employment. One is a household survey in which we do not ask people whether their activities are illegal. We ask them what they are doing and we promise them confidentiality, and we do know that a lot of people tell us things which they might not tell to the tax collector, for example. So that in the household survey we feel that we may pick up some off-book activities in terms of the employment experience.

In the establishment survey of employment, we get people from payroll records. So whatever is on a payroll record we would have.

Senator SCHMITT. Is it the feeling of your researchers that the so-called off-the-book job rate has increased in recent years?

Ms. NORWOOD. We don't have any evidence of that at all, and I couldn't comment on it.

EFFECTS OF RECESSION IN NEW MEXICO

Senator SCHMITT. Mr. Secretary, in New Mexico the effect of the national recession that began last summer has been masked and not too evident because of special recessions that already existed within the economy there as well as in other parts of the country. One, of course, was in the housing and construction trades that had been around for about a year prior to the initiation of the current recession. I'm sure the President is to blame for that one, too. The uranium industry was down because of the long-term drift in policy on commercial nuclear power development, and more recently, in fact at the current time, there is almost a precipitous drop-off in copper production and related activities. The unemployment rate in that industry is going up very, very fast, at least in part as a result of the national recession. That's probably our first major impact. And the next one, which is also beginning, is in the potash industry, which relates to a drop-off in agricultural activities.

In either one of those industries have you begun to study whether or not there is any foreign impact, that is, unfair competition abroad, dumping of commodities or the like in either the copper or the potash industry?

Secretary DONOVAN. They are constantly being monitored by the Federal Trade Commission, as you are aware, and also by our Bureau of International Labor Affairs. I don't know at this sitting what data we have on either of those industries, but I will be happy to provide that information.

Senator SCHMITT. Could you ask them to contact my office with any recent information they may have. It is a fairly serious situation now in New Mexico, and it would be of some interest to me whether or not trade adjustment assistance may be triggered at the end of the normal unemployment compensation period.

Secretary DONOVAN. We will do that, yes, sir.

[The information follows:]

FOREIGN IMPACT ON COPPER AND POTASH INDUSTRIES

The Office of Trade Adjustment Assistance in the Department of Labor has undertaken recent investigations in response to petitions for copper producers. Benefits were denied on all of the petitions, because imports had been falling. Petitions have been granted to employees of copper producers in the past, and the status of future petitions will depend on the relation of imports to domestic output. No petitions have been approved to entitle currently unemployed persons in the potash industry for trade adjustment assistance.

The copper industry appealed for protection from imports in February 1978. The International Trade Commission investigated the case, and in August 1978 recommended a 5-year quota on imports. President Carter denied protection in October 1978 on grounds that such action was not in the best interest of the United States. No new investigations are currently underway, although industry experts at the ITC expect a petition from the Brass Mill Industry.

SKILLED LABOR SHORTAGES

Senator SCHMITT. To what extent have you determined that there will be bottlenecks in the defense buildup due to shortages of skilled manpower?

Secretary DONOVAN. Well, we have been involved in two studies. I believe Janet has done one specific study in the area of tool and dye makers with regard to the defense industry, and we are in contact constantly with Commerce and Defense, and it has been discussed heavily at some of the subcabinet meetings.

We can find—and I don't think we have it with us—no real tight supply of personnel except in, I think, the shipwright area. That surprised us. We had understood, and I was using some quotes in speeches, that we were going to be short one-quarter of a million machinists. After this survey it was indicated that would not be the case. In the shipwright area I believe there were some shortages.

Senator SCHMITT. Is this report now available to the public or this committee?

Secretary DONOVAN. We can provide it. It was done for the Defense Department.

Senator SCHMITT. Would you provide it, please. Because we had heard also the one-quarter of a million, 240,000, I believe, shortfall in 1985 was in machinists, skilled machinists. You are saying you don't believe that?

Secretary DONOVAN. Maybe Ms. Norwood's memory can be jogged on the numbers. I don't know.

Ms. NORWOOD. We will submit something for the record.

[CLERK'S NOTE.—Additional information on the shortage of machinists, including the Department of Defense study, is located in the subcommittee's files.]

[The information follows:]

LETTER FROM JANET NORWOOD

MAY 6, 1982.

Hon. HARRISON H. SCHMITT,
Chairman, Subcommittee on Labor, Health and Human Services, and Education, Senate Appropriations Committee, U.S. Senate, Washington, D.C.

DEAR SENATOR SCHMITT: During the hearings on the Department of Labor's fiscal year 1983 apropriations, you raised several questions about occupational shortages. I promised to provide you further information on work currently underway in the Bureau of Labor Statistics which relates to the analysis of occupation shortages of machinists.

During the past few years many articles dealing with current and expected future shortages of machinists were published in national periodicals. Some of these articles presented information based primarily on the opinions of a few industry officials, while others presented information derived from surveys of major employers of machinists. Unfortunately, existing Federal statistical collection programs do not collect data on current shortages of workers in specific occupations and information about future occupational shortages is very limited. Therefore, the analysis of machinists that is being conducted by BLS uses a variety of available statistical data to clarify some of the issues.

The following are the highlights of our analysis:

A survey conducted by the National Tooling and Machining Association has provided the widely-used statistic that there will be a shortage of 250,000 machinists by 1985. The survey on which this statistic is based has very little reliability since it covered only a small percentage of establishments employing machinists and the response rate was low.

Many employers currently would hire more skilled machinists if they were available at the prevailing wage rate. There are no statistics that provide an accurate number of those that would be hired.

Employment of skilled machinists increased faster than other workers in manufacturing industries during the 1970's. Even during the 1975 recession their employment did not decrease. This shows the great need for machinists in industry.

Skilled machinists had very low unemployment rates during the 1970's. This indicates the ease with which machinists find employment and that few lose their jobs.

Wages of machinists did not change relative to other production workers in manufacturing industries during the 1970's. If employers are short of workers in a specific occupation, the wage rate of those workers can be expected to rise. However, wage structures are interconnected in complex ways that may not allow wage differentials among occupations to change. This apparently is the case for machinists in many industries.

Registered apprenticeship training conducted by employers decreased during the 1970's. During shortage periods, training would be expected to increase. Our research shows that nonregistered apprenticeships probably increased significantly, even though registered programs decreased.

A survey of job vacancies in Massachusetts shows that machinists had the highest vacancy rate (vacancies divided by employment) of any occupation in the State.

Recent BLS projections of the employment of machinists to 1990 show that job openings per year during the 1980's are likely to be fewer than in the 1970's. Technology is reducing the growth rate for skilled machinists.

In summary, shortages for machinists currently exist since many employers would hire more skilled machinists if they were available. However, the shortage estimates that have been publicized by employer associations and others are greatly exaggerated—they are based on very unreliable statistics. The shortage situation in the future is likely to improve during the 1980's rather than get worse, since annual job openings are expected to be fewer than in the 1970's and employer training is more likely to increase rather than decrease. Actions that would provide employers with incentives to train more workers, however, would no doubt result in some additional training and reduce shortages.

I am including a draft of an article reviewing machinist shortages that provides some additional detail. We expect to publish it in the Bureau's Monthly Labor Review in June. I also am including a draft of an article on the supply and demand of college graduates over the next decade. This article will appear in the summer issue of the Bureau's Occupational Outlook Quarterly, which is scheduled for publication in July. Finally, I am enclosing testimony given by a member of my staff, Ronald E. Kutscher, before Senator Quayle's Subcommittee on Employment and Productivity which also deals with skill shortages and surpluses.

We would be pleased to provide additional information or a briefing for you or your staff if you desire after reviewing this material.

Sincerely yours,

JANET L. NORWOOD, *Commissioner.*

STUDY OF THE SUPPLY OF MACHINISTS

Ms. NORWOOD. We have begun looking at this whole issue across the board. We have done a study of the supply of machinists and have found that the commonly-used statistic—a 250,000 shortage of machinists by 1985—is based upon a survey that has little reliability. This survey was conducted by an industry association. It had a very low response rate, and the respondents were not representative of all employers of machinists. In our study, we reviewed a variety of data. These data do not support the contention that there is a shortage of machinists approaching 250,000. Our study concludes, however, that a shortage exists for highly trained machinists.

As the Secretary has indicated, the Department is taking the leadership in a task force which is looking at the defense contracts and trying to translate those into occupational requirements by industry, the industry contracts and the occupational requirements, and then we would look to see what the possible supply of some of those occupations are.

But we can submit for the record a statement on the machinists study that we have done.

Senator SCHMITT. Well, I hope you will, because this morning I spent the better part of a half an hour with representatives of the Department of Defense, Department of Commerce, Department of the Interior, and General Giuffrida of FEMA discussing this very issue, and they were believing the numbers, and that's why we were discussing it. I don't begrudge the half-hour discussion, but if the numbers aren't real, at least those people ought to be aware of it.

Ms. NORWOOD. We will be publishing that report very soon.

Senator SCHMITT. I would call them on the phone and tell them, Hey, you guys, we may have some new information.

Ms. NORWOOD. We have shared it with the Defense Department, and this is just on machinists.

Senator SCHMITT. Well, Mr. Donnelly didn't know about it this morning. As I recall, he was still using the older numbers.

Secretary DONOVAN. Mr. Carlucci is aware of the reports.

LMSA PROGRAM INCREASE

Senator SCHMITT. I guess he hasn't told Mr. Donnelly about it.

You are requesting 150 additional staff for stepped up efforts to combat criminal misuse of union funds. How many additional criminal investigations do you expect to be conducted with this extra staff allowance?

Secretary DONOVAN. Well, we're studying how many we can do. The obvious reason for this request is that the Congress has demanded it, and the Department, frankly, has been criticized in the past because of insufficient resources to effectively carry out the responsibilities under LMRDA. There are over 54,000 labor organizations in this country, and the present resources allow an audit of any one of these organizations every 30 years. Many have never been audited in the 22 years since the act was passed.

The specific purpose for the request of 150 positions and $4.2 million is to do the obvious, and that is to initiate a long-term plan to revive the dormant program. We must have a major increase in the frequency of audits and we must apply new auditing tools and we must be in a position to employ more sophisticated investigative and auditing techniques in order to do the job that the law demands. We have to do this to carry out a clear Federal responsibility to deal with serious problems of criminal misuse of union funds and other serious violations of LMRDA.

This request and the request for the Office of the Inspector General, and a 52-position increase, I consider almost an emergency if we are to do our duty.

Senator SCHMITT. Is there some infinite reservoir of experienced investigative staff that you can hire 150 people from, or does that mean that you go to the FBI and get a few there, Customs and get a few there?

Secretary DONOVAN. Maybe, Al, you can help with where the sources are. We certainly want a varied group with specific talents.

Senator SCHMITT. But you shouldn't want to rob other agencies of their investigative personnel.

Mr. ZUCK. We would get them from a variety of sources. Some are those that you have already indicated, and possibly some agencies in Washington and across the country are facing staffing reductions as well. So some investigators may be available.

There would also be a small proportion that would be entry level recruits who would be trained as investigators, particularly in union special problems. It would be a combination of getting experienced investigators from other organizations and new entrants, trained by us to be investigators, that would produce the 150.

ESA'S SPECIAL TARGETED ENFORCEMENT PROGRAM

Senator SCHMITT. In January 1982 the Department began a special targeted enforcement program aimed at employers who hire illegal aliens at substandard wages. Why did the Department see fit to launch a major new program that was not included in its 1982 budget submission and without informing this committee in advance?

Secretary DONOVAN. Well, the special targeted enforcement program, the STEP program, is that what you are referring to?

Senator SCHMITT. Yes.

Secretary DONOVAN. Well, what we really did is put together a task force, and it has proven to be very effective. Its main objective is to look at minimum wage, overtime payment, child labor investigations in areas around the country where the high levels of illegal alien employment is located. We hope to have 7,000 investigations completed in 1982 and 13,000 in 1983.

To my view it was a management decision to get more impact out of the personnel that we have and more production, and it is working that way.

Senator SCHMITT. It does represent a divergence of resources, does it not, from other programs?

Secretary DONOVAN. We have to make decisions with regard to the proper use of resources, dollars and personnel, and we decided that the special targeted enforcement program was the most efficient way to do it. But STEP is a wage-hour investigation, and in that way is not diverting any resources of the wage-hour program.

Senator SCHMITT. How are employers selected for investigation under this program?

Secretary DONOVAN. By patterns. Mainly by our local people in the field who are closer to the situation. There are patterns of development in certain industries that would indicate that they would be prime targets for this special targeted program. The major decisions are made in

Washington with a lot of input from the local people who have the knowledge.

Senator SCHMITT. What have been the results so far?

Secretary DONOVAN. We completed, as I say, or will, 7,000 of these investigations in 1982 and 13,000 in 1983. What I don't have here for you are the exact results in dollars recouped, but it has been an impressive record, and I will be sure to get that for you for the record.

[The information follows:]

STEP RESULTS

During the 3 months that our special targeted enforcement program has been in operation we have completed 3,000 investigations. These investigations have uncovered a total of $7.6 million in unpaid wages owed to 36,000 employees. A total of $5.2 million in underpayments has been restored to 30,000 employees so far, and I am certain that more wages will be restored as a result of litigation against employers who refused to voluntarily pay their employees as required by law.

GOAL OF STEP

Senator SCHMITT. Are you merely trying to get employers to pay the illegal aliens a minimum wage, or are you trying to identify illegal aliens?

Secretary DONOVAN. Well, we may do both, but our basic thrust is enforcement of the minimum wage for all workers.

Senator SCHMITT. Is this done in cooperation with the Immigration and Naturalization Service (INS)?

Secretary DONOVAN. Yes; and it is going to be broadened if the immigration bill that the administration has submitted to the Congress is passed. There will be additional personnel and additional dollars for the Labor Department in view of the INS legislation.

Senator SCHMITT. Would you supply the subcommittee with a brief summary of the STEP program in more detail than we have been able to get to today?

Secretary DONOVAN. I will.

[The information follows:]

SUMMARY OF STEP

On July 30, 1981, the administration announced a comprehensive immigration and refugee policy reform package. Included in this package was a proposal for $6.0 million in resources for strengthened Fair Labor Standards Act enforcement in areas of high illegal alien employment. The use of illegal alien workers at substandard wages creates an unfair competitive advantage for unscrupulous employers and tends to depress wages generally in the area.

The Department's role under the immigration policy is to target investigations into areas where the use of illegal aliens is widespread to insure that wage and labor standards requirements are met. The revised fiscal year 1982 budget includes $6.0 million for this purpose; the fiscal year 1983 budget proposal includes $7.9 million. These funds provide for 197 compliance officer positions in the wage and hour division.

The 197 compliance officer positions are being used for a special targeted enforcement program (STEP) of minimum wage, overtime pay, and child labor investigations in areas around the country with high levels of illegal alien employment. These positions have been allocated to the regions based on data from the Immigration and Naturalization Service on where illegal aliens have been apprehended as well as the Department's own data on regional wage and hour violations.

The STEP program was initiated in January 1982 and we expect to complete 7,000 of these investigations in fiscal year 1982 and 13,000 in fiscal year 1983.

The mechanics of STEP investigations follow Fair Labor Standards Act investigations in which wage and hour compliance officers review timecards and payroll records and interview employees to determine if the employees are being paid legal wages. Where violations are disclosed, employers are asked to correct the violations and pay any back wages due. Where an employer refuses to do so, the Department can initiate litigation to resolve the matter. Also, the Department assesses civil money penalties for child labor violations.

STEP investigations differ from other Fair Labor Standards Act cases in that the Department has reason to believe that illegal aliens are employed at the firms selected for investigation. The selection process is closely coordinated between local wage and hour and Immigration and Naturalization Service officials. In some cases, INS furnishes names of specific firms they have contacted in the past, in other cases, general information is provided on localities and industries with high concentrations of illegal alien employment. Also, wage and hour has instituted procedures whereby compliance officers visit INS detention centers and interview detainees to obtain information on firms which hire illegal aliens for less than legal wages.

GUEST WORKER PROGRAM

Senator SCHMITT. My concern is not over the payment of less than minimum wages. I think you are absolutely correct. Guest workers, whether legal or illegal, should be protected by our labor laws. That is the reason I have advocated a legal guest worker program rather than the current illegal program. One of the reasons. But I am a little bit concerned about how employers who may not have violated the minimum wage laws may still be subjected to some additional harassment as they try to stay in business when they cannot get U.S. workers to take the same jobs, and that is the reason I ask these questions.

Secretary DONOVAN. I understand.

Senator SCHMITT. Mr. Secretary, I see the distinguished minority leader, the Senator from West Virginia, is here. If he doesn't mind, I am going to submit the rest of my questions for the record and turn the gavel over to him to complete the hearing. I know he has a few questions. And I will go and try to do my duty in the Intelligence Committee.

BLACK LUNG CLAIMS

Senator BYRD [presiding]. Mr. Chairman, I thank you. You are very gracious to allow me to do this.

Mr. Secretary, I appreciate your patience. I know you have been here a good while. My questions will not be many in number.

West Virginia has about 60,000 people now working in its coal mines and has many former coal miners who suffer from Black Lung disease who are receiving or have applied for Black Lung benefits. How many claims, could you tell me, are currently awaiting processing to be forwarded to the administrative law judges?

Secretary DONOVAN. I'm sorry, Senator Byrd, we don't have that number with us, but we will supply it for the record. It is a substantial number.

Senator BYRD. Very well. I understand that there are about 10,000. I would appreciate if you would supply the exact number for the record.

Secretary DONOVAN. That does sound about the right number. We will get it exactly.

Senator BYRD. Very well.

[The information follows:]

Approximately 10,000 claims are awaiting Department of Labor processing to the Office of Administrative Law Judges, which already has an inventory of about 16,500 Black Lung claims for hearing.

BLACK LUNG ADJUDICATION BACKLOG

Senator BYRD. How many claims are backed up at the administrative law judge level?

Secretary DONOVAN. I don't have those numbers at hand. I will supply them for the record.

Senator BYRD. I understand there are about 13,000. But if you will, please verify that for the record.

[The information follows:]

ADMINISTRATIVE LAW JUDGES BACKLOGS

The 1977 amendments to the Black Lung Benefits Act created a groundswell in the volume of Black Lung claims being processed and adjudicated. From a management point of view, the Department was faced with a choice between requesting additional personnel for a large, short-term increase in the case load or stretching our resources to handle this "bubble," which could reasonably be expected to dissipate by 1983 and 1984. The Department's decision, which was supported by the Office of Management and Budget, was to expand staff resources to a degree but to avoid expanding them so much as to create personnel excesses a few years down the road.

Having made that decision, we are now doing our best to process the cases as expeditiously as possible. In the interim we have witnessed the 1981 amendments to the law, resulting in a transfer of payment liability in a large number of Black Lung cases. When the new law became effective, it was imperative that we channel resources into an immediate review and re-review process so that all cases affected by the amendments could be quickly identified and appropriate action taken.

In the Black Lung Program, unfortunately, hearing delays are being experienced. Currently, the OALJ has a backlog of 11,000 unassigned Black Lung cases with 6,000 anticipated to remain unassigned as of October 1, 1982. The coverage length of time required to dispose of a Black Lung case after assignment to a judge has actually dropped over the past year from 202.1 days in fiscal year 1981 to 193.7 days in fiscal year 1982.

We are currently directing as much of our resources as possible to the Black Lung area and processing these cases as quickly as possible without abdicating our statutory responsibilities in other program areas.

BENEFITS REVIEW BOARD WORKLOAD

Senator BYRD. How long does it take a new claim to be completely adjudicated through the administrative law judge level?

Secretary DONOVAN. I am advised about 6 months, Senator.

Senator BYRD. How many appeals are currently awaiting action by the Benefits Review Board?

Secretary DONOVAN. We will submit that for the record.

Senator BYRD. I understand there are about 3,400 of which 2,700 are Black Lung. But, if you would verify that for the record, I would appreciate it.

[The information follows:]

As of April 30, 1982, there were 3,667 appeals pending before the Benefits Review Board. Of these, 2,971 were Black Lung appeals and 696 were Longshore appeals.

BRB BACKLOG ESTIMATE FOR FISCAL YEAR 1983

Senator BYRD. How many claims are expected to be backlogged in the Benefits Review Board at the end of fiscal year 1983 given the staffing and funding levels in your budget request levels?

Secretary DONOVAN. We will also submit that for the record.

Senator BYRD. Thank you. I understand there are about 5,000.

[The information follows:]

At requested staffing and budget levels for fiscal year 1983, it is expected that there will be 4,934 appeals pending before the Benefits Review Board by the end of fiscal year 1983. Of these, 3,840 will be Black Lung appeals, which will require 3.4 years' worth of effort to complete at requested resource levels and 1,094 will be Longshore appeals requiring 5.9 years' worth of effort to complete. Legislation has been proposed that would enable the board to increase the number of board members and hence the decision rendering capacity of the board.

BRB MONTHLY APPEALS PROCESSING RATE

Senator BYRD. I understand it generally takes 5 years or longer from the time a claim is filed until it is formally reviewed by the Benefits Review Board. It would appear that the mandate of the law that these claims be handled in a prompt manner is not being met. Is it correct that the board is receiving about 240 new appeals per month and is addressing only about 70 of these appeals each month?

Secretary DONOVAN. We will check those numbers and submit them for the record.

[The information follows:]

During the first 7 months of fiscal year 1982, the Benefits Review Board received an average of 200 new appeals each month and disposed of an average of 74 appeals each month.

REDUCTION OF BRB BACKLOG

Senator BYRD. Could you tell us what is being done to reduce the backlog and to comply with the law?

Mr. ZUCK. Mr. Chairman, a combination of activities are underway both within the Benefits Review Board and within the Solicitor's office, which represents the Department in those appeals. The Solicitor is increasing the number of attorneys that are being assigned to represent the Department in those cases before the Benefits Review Board. The Benefits Review Board itself is considering some changes in procedures and activities involving additional legal assistance to speed up the process of decisionmaking and getting the claims finally resolved.

BLACK LUNG FIELD OFFICE CLOSURES

Senator BYRD. On April 15 I directed a letter to you by riding page to express my concern about the Black Lung field offices. Have you received that letter?

Secretary DONOVAN. I have, sir.

Senator BYRD. You have?

Secretary DONOVAN. I have.

Senator BYRD. West Virginia has two district offices, Charleston and Parkersburg, and six field offices. The 1977 Black Lung amendments authorized 33 field offices. How many of these have been closed?

Secretary DONOVAN. There are no plans to close any West Virginia Black Lung offices in this fiscal year.

Senator BYRD. By this fiscal year, do you mean 1982?

Secretary DONOVAN. Yes. It will be necessary, however, for us to take a closer look at all the Black Lung offices during fiscal 1983 as DOL and ESA continue to reduce their budgets. I can assure you that if and when any such office closings come under consideration, Bob Collyer will be happy to meet with you to discuss this issue. If it becomes necessary, my policy would be that those offices that would most likely be closed, if any, would be the one-person field offices as the first step.

Senator BYRD. You mention the one-person field offices as the first step, which would imply that there would be a second step.

Secretary DONOVAN. That is the implication, but it is not necessarily so. It is being studied now.

Senator BYRD. I have heard it said that all 25 remaining field offices are scheduled for closure. Can you give me any official confirmation of that data?

Secretary DONOVAN. That has not been decided, and as I say, if and when these closures are in their final stages of decision, Bob Collyer will be happy to meet with you or any other interested Senator on the tentative decision before it is made.

Senator BYRD. I would appreciate it if you would meet with me.

Secretary DONOVAN. We will do that, sir.

Senator BYRD. Do you presently have plans to close any field offices in West Virginia?

Secretary DONOVAN. We do not.

Senator BYRD. In this year?

Secretary DONOVAN. That is correct.

Senator BYRD. Do you have plans to close any field offices in West Virginia in fiscal year 1983?

Secretary DONOVAN. We do not as yet. It is being studied, as all field offices are.

Senator BYRD. Do you have or has anyone in your Department ever had any plans to close any of these field offices in West Virginia?

Secretary DONOVAN. I have not, nor has Bob Collyer, and that is where the decision will be made.

BLACK LUNG FIELD OFFICE FUNDING REQUIREMENTS

Senator BYRD. What is the annual cost to operate the present field offices in the Black Lung program?

Secretary DONOVAN. I do not know. We will get that for you for the record.

[The information follows:]

The average cost of operating a field station is about $22,000—$16,000 for salary and $6,000 for rent. We have six offices with an estimated annual cost of $96,000 for salaries and $36,000 for rent. There are other costs as well, such as telephones, but they are relatively small.

BLACK LUNG WORKLOAD

Senator BYRD. As I understand it, there are no plans to close any field offices now in West Virginia in this year. I also understand you to say there are no present plans to close any next year—but that if any such plan should evolve that this would be discussed with me prior to such closure.

Secretary DONOVAN. That is what I am saying.

Senator BYRD. If such field offices were closed, how would you propose to handle the thousands of claims that are initiated under this program each year, and the many continuing questions from those who are already receiving Black Lung benefits?

Secretary DONOVAN. It would be the workload that would have to be analyzed, the inconvenience and travel between offices. All of that would have to go into the equation before a decision was made.

Senator BYRD. Could you state what would be the net saving of any proposed field office closure?

Secretary DONOVAN. I can't now, but we will get you that information.

[The information follows:]

The Department of Labor would save about $6,000 on rent costs, per office per year. The $16,000 average salary per office would not be saved, because the position would be reassigned to claims processing at the nearest district office.

RESOURCE IMPACT OF BLACK LUNG FIELD OFFICE CLOSURES

Senator BYRD. Would field office closings require additional staff at the district offices?

Secretary DONOVAN. I am not certain.

Senator BYRD. Would it not be correct to presume that, if field offices were closed, there would be additional staff needed at the district offices to handle the applications?

Secretary DONOVAN. If the workload demanded it, yes. But it might not in certain areas.

Senator BYRD. Any net savings would have to consider expansion of the district offices and quite possibly these savings would not be significant.

Secretary DONOVAN. I believe if that were the case, then the one-man office probably would not be called upon to be closed. It would be an efficiency factor, and the situation you described doesn't sound too efficient to me.

Senator BYRD. What was that last thing you said?

Secretary DONOVAN. I understood you to say that in closing a one-man office it would necessarily increase the employment at the regional office. If that were the case, that wouldn't seem to me to be so economical. So I wouldn't argue too strongly for the closing. But that's only one factor, I'm sure, that goes into the decision.

WEST VIRGINIA BLACK LUNG BENEFITS WORKLOAD

Senator BYRD. Would you submit for the record the number of inquiries, the number of claims, and the number of cases handled through each of the West Virginia field offices in each of the last 3 years.

Secretary DONOVAN. We will.

[The information follows:]

The Department of Labor Black Lung Field Stations exist primarily to answer claimant walk-in or telephone inquiries. Actual claims processing takes place only in the District Office.

The Department has not maintained yearly information on the number of telephone or walk-in inquiries at each of the field stations. However, the Elkins, W. Va. field station has averaged 125 telephone and 103 walk-in inquiries per month in recent months, and Morgantown has averaged 352 telephone and 176 walk-in inquiries.

Separate statistics have not been maintained for the four West Virginia field stations reporting to the Charleston District Office—Beckley, Logan, Madison, and Bluefield. Together, however, they have averaged about 550 telephone and 240 walk-in inquiries per month.

Claims are received and adjudicated in the Charleston and Parkersburg district offices. These two offices serve West Virginia as well as Virginia, Washington, D.C., and Maryland.

LOCATION OF WEST VIRGINIA BLACK LUNG FIELD OFFICES

Senator BYRD. Could you state for the record the locations of the various field offices in West Virginia at this time?

Secretary DONOVAN. I cannot.

Senator BYRD. Could someone on your staff? Could someone state that for the record now?

Secretary DONOVAN. Elkins, Morgantown, Beckley, Bluefield, Logan, and Madison.

Senator BYRD. And at the present time there is no plan to close any of those offices?

Secretary DONOVAN. No, sir.

Senator BYRD. At the present time there is no plan to close any of those offices in fiscal year 1983?

Secretary DONOVAN. To the best of my knowledge, that is true.

Senator BYRD. And, if such a plan should develop, who is it who would discuss this with me?

Secretary DONOVAN. Deputy Under Secretary Bob Collyer.

MSHA BUDGET AMENDMENT

Senator BYRD. Turning to another matter, on page 3, and again on pages 6 and 7 of your prepared statement, it is indicated that a $15 million budget amendment for MSHA in fiscal year 1983 will be requested "to restore the coal enforcement activities to 1979 levels." The President announced this budget amendment on February 6, more than 2 months ago. Has this amendment been transmitted to the Congress?

Secretary DONOVAN. It has not as yet, and we constantly ask for it. As you know, it was agreed to, for all of the reasons why, including enhancing the ability to improve the health and safety of the miners through additional inspectors.

Senator Byrd. Do you have any idea as to when you might expect to see this budget amendment?

Secretary Donovan. I hesitate to give you a time. The last time I was asked that question I gave a date of 2 weeks, and it didn't occur. I hesitate to say when, but I know that it is coming.

PROPOSED MSHA REDUCTION

Senator Byrd. The President's fiscal year 1983 budget notes the reduction of $8.9 million in the Mine Safety and Health Administration budget request as a proposal for later transmittal. What is the nature of this proposed reduction? How was it developed? What programs would be reduced? And when does the administration anticipate transmitting this reduction formally to Congress?

Secretary Donovan. I am not sure that there will be a proposal for reduction, Senator Byrd. I consider the $8.9 million item shown in the President's budget proposed for later transmittal to be a place holder for possible submission of legislative changes. The details of the changes are still under discussion and are not even clear at this time. Also the timing of the submission of legislation, if any, is not clear.

MSHA SAND AND GRAVEL ENFORCEMENT

Senator Byrd. The supplemental appropriation bill for fiscal year 1982, H.R 5922, which was reported by the House Appropriations Committee prior to the Easter recess, contained language in section 203 which restores to the Mine Safety and Health Administration the same enforcement authority vested in the administration on September 30, 1981. This language would negate the effects of the Rousselot amendment which presently limits MSHA authority. Do you support language such as is contained in section 203?

Secretary Donovan. Yes; we would strongly recommend that the sand and gravel operations come back under MSHA.

FATALITIES IN SAND AND GRAVEL INDUSTRY

Senator Byrd. Would you supply for the record the number of fatalities that have occurred in those industries in each of the last 5 years?

Secretary Donovan. The sand and gravel industry?

Senator Byrd. Yes.

Secretary Donovan. We will.

[The information follows:]

Fatalities in the Sand and Gravel Industry

Calendar year:	*Number of fatalities*
1978	25
1979	25
1980	15
1981[1]	9
1982[2]	4

[1] Preliminary.

[2] Incomplete data. MSHA is prohibited from enforcing the Mine Act in these operations since passage of the fiscal year 1982 continuing resolutions (Public Laws 97-92 and 97-161).

SUBMITTED QUESTIONS

Senator BYRD. Well, I thank you, Mr. Secretary, for your responses. I urge that the Black Lung field offices in West Virginia not be closed.

I have some additional questions that I will give you to be answered for the record, and I would ask you to please provide the answers at the same time that you return the corrected hearing transcript.

I thank you for your patience, I thank you for your answers, and I will thank you for any consideration that can appropriately be given to maintaining the field offices which serve the people of West Virginia.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY SUBCOMMITTEE STAFF

INTERAGENCY AGREEMENTS TO HELP FIND JOBS

Question: What efforts are being made to link Labor Department training with jobs created through other Federal programs, such as public works and Urban Development Action Grants? What interagency agreements does the Employment and Training Administration currently have in effect to coordinate its program with other Federal activities? Are they effective?

Answer: The Employment and Training Administration has had interagency agreements with the Department of Housing and Urban Development, the Economic Development Administration, the Community Services Administration, the Department of Transportation, and the Small Business Administration. Some were effective, and some were not. Much of the lack of success stemmed from the diverse laws, regulations, and goals for each of the various agencies.

The planning process expressed in the Administration's bill calls for coordination and linkages and removes any prohibition under Federal law for the use of Private Industry Councils in planning for or advising on programs under Vocational Education, Vocational Rehabilitation or any other Federal program relating to employment and training. In addition, Governors may combine advisory councils whose functions relate to employment and training. This will permit the utilization of all available resources for training and employment.

EMPLOYMENT AND TRAINING BLOCK GRANT

Question: How much money do you estimate could be saved through consolidation of existing CETA programs into a single block grant? How would you design an employment and training block grant to ensure proper use of federal funds?

Answer: It is difficult to forsee the exact amount of money which will be saved through the consolidation of existing CETA programs into a single block grant. However, by virtue of the fact that there will be one administrative structure for the block grant, as opposed to the current separate administrative units for the different titles of CETA, we expect that the savings will be significant.

The Administration's bill defines what we consider to be a grant system which will ensure the proper and most cost-efficient operation of an employment and training program. It is designed to ensure proper use of Federal funds.

Question: What do you see as the appropriate Federal role in administering an employment and training block grant? What role would the States play? Do you envision a time when the Federal Government will play no significant role in employment and training programs? Do you think this activity someday could, or should, be the sole responsibility of States, local governments, and the private sector?

Answer: Under the Administration's bill, the Federal role is one of monitoring the operations at the State level. This monitoring will focus on, among other things, the provision of performance standards for programs and fiscal accountability. The Administration's bill defines the State role as one of operational responsibility for the program. The States would be responsible for such things as designation of service delivery areas, allocations, performance standards for service delivery areas, and monitoring program operation at the service delivery area level.

It is impossible to forecast whether or not there will be a time when the Federal Government will no longer play a significant role in employment and training programs, and this activity will become the responsibility of States, local government and the private sector. We would assume, however, that as long as Federal dollars are appropriated for these programs that the Federal Government will continue its oversight role.

PRIVATE SECTOR JOB CREATION

Question: The Administration is pushing job creation in the private sector as its major manpower policy. Does your research indicate that the private sector will be able to deal with unemployment, and why so, or why not?

Answer: The President's overall Economic Recovery Program is the best vehicle we have for reducing overall unemployment. Economic conditions have not slowed the Private Sector Initiative Program under CETA, and we anticipate that the recovery will be timed to coincide with the implementation of the Job Training Act. We anticipate that the private sector will welcome the opportunity to become even more involved in the planning, design and operation of training programs to meet skill shortage needs that would otherwise dampen efforts for business expansion. The Job Training Act will provide the private sector with skilled workers to improve productivity and continue to stimulate the nation's economy.

FRAUD AND ABUSE IN TRAINING PROGRAMS

Question: What is the Department of Labor currently doing to cut down on fraud and abuse in vocational training programs? Wouldn't a diminished Federal role in employment and training, as in a block grant structure, possibly result in an increase in fraud and abuse? How would you propose to protect against this?

Answer: The CETA Amendments of 1978 contained a number of specific provisions aimed at eliminating waste, fraud and abuse in programs under the Act. In general, these requirements called for increased fiscal controls, financial accountabillity, and independent monitoring of program activities. The implementation of these provisions has had some measure of success in addressing past CETA problems. However, the area of audit resolution and debt collection resulting from program audits continued to be a major problem. When the Administration took office there was a backlog of approximately 600 unresolved audits. We felt this was a source of major concern and proceeded to strengthen the existing effort in order to deal with the situation. In a matter of nine months, we were able to reduce the backlog of unresolved audits to zero. This Administration is committed to the sound administration and financial management of programs under the proposed Job Training Act of 1982. We feel that the provisions contained in the proposed bill reflect that commitment.

The proposed legislation provides a number of specific measures to insure the integrity of the program:

o Fiscal controls, accounting, audit and debt collection procedures to assure the proper disbursal and accountability for funds received under the Act.

o Competitive contracting procedures which take into account past performance in job training, fiscal accountability, and ability to meet performance standards.

o Establishment of result-oriented performance standards to measure the performance of service deliverers.

o Establishment of procedures for monitoring, requiring corrective actions, and sanctioning service deliverers which fail to meet the State's performance standards, requirements of the Act and the regulations.

o There are also specific criminal provisions for offenses such as theft or embezzlement of job training funds.

TRAINING ALLOWANCES

Question: Last year's Senate report urged you to consider reducing vocational training stipends in order to maximize the number of employment and training opportunities within a limited level of resources. To what extent does your proposed new training bill de-emphasize stipends for participants? In addition to reducing program costs, what evidence is there to support the view that reduced allowances will improve program quality by attracting a more motivated group of trainees? What provision is made to permit stipends for these individuals who would not otherwise be able to participate in training programs?

Answer: Under the Administration's proposed Job Training Act of 1982, no stipends, allowances or other such payments to participants are permitted. Experience has shown that participants can be trained successfully without income support. In fact, we have evidence that programs that do not pay allowances can be successful and attract motivated trainees without restricting participation. In addition, we have the experience of Opportunities Industrialization Centers, Inc. (OICs) and 70,001 Ltd upon which to draw. These programs among others have had a long history of not providing allowances, without any adverse impact on participants.

As a guideline, the Administration's position is that 75 percent of every training dollar should be spent on training. The remaining 25 percent can then be spent on administrative costs and supportive services. These supportive services, such as transportation and daycare, in turn will facilitate the participation of individuals in the training programs. Also, those truly needy individuals who need some income in order to participate will continue to receive support under such programs as AFDC, SSI and unemployment compensation.

PRIVATE SECTOR OFFSETTING FEDERAL JOB TRAINING CUTS

Question: Based upon your experience in running private sector programs under CETA, do you think the private sector is willing and able to make up for some of the reductions in Federal spending on employment and training? What evidence do you have so far to indicate the private sector is creating new job opportunities to make up for the elimination of public service employment? Given currently severe economic conditions for all segments of the labor force, is it realistic to expect the private sector to hire and train the disadvantaged?

Answer: We do not expect the private sector to make up for funding reductions in employment and training programs. Many of the funds expended under CETA were used for programs such as public service employment that were not much more than make-work jobs, contributing little to the nation's productivity, the economy, or to the employability of individual participants who were enrolled in the programs. We would not want the private sector to step in to salvage these wasteful, ineffective efforts.

Private business and industry have been assuming responsibilities for employment and training programs under CETA, through the Private Sector Initiative Program (PSIP). The impetus for a focus on training for skilled jobs in demand, rather than income maintenance, has come largely from the private sector. Under PSIP, many involved businesspeople asked that they not be required to pay stipends to those in training, and the overall program had only a miniscule amount expended on work experience, even though this was an allowable activity. Many of the improvements proposed in the Job Training Act stemmed from the practical experiences of local business and industry representatives involved in employment and training programs under CETA. So the evidence is there that the private sector is ready to assume, and has already taken on, responsibilitiy for redirecting our employment and training efforts.

VIABLE LEVEL OF FEDERAL TRAINING EFFORTS

Question: The Labor Department's employment and training programs were cut from $8 billion in Fiscal 1981 to $3.3 billion in Fiscal 1982, although funds deferred from prior years leave about $4 billion available for use in Fiscal 1982. Will the $2.4 billion proposed for Fiscal 1983 be sufficient to maintain a viable nationwide employment and training system? How much would Congress have to appropriate to sustain current enrollment levels under the existing CETA programs in Fiscal 1983?

Answer: It is important to recognize that the overall budget proposal of $2.4 billion to carry out programs under the proposed Job Training Act of 1982 reflects the Administration's goal of reduced Federal spending and cutting the Federal deficit. This, of course, translates into overall decreased levels of funding for all programs.

Although this amount is less than CETA funding levels for these programs in previous years, we firmly believe that the proposed budget request will permit the Secretary to fully achieve the objectives of the Administration's bill. We also feel that improved management, reduced administrative requirements, and careful targeting of resources will enable us to provide more effective assistance than ever before.

In 1981, the participant level in training titles was 1,575,000. In 1982, the $3.2 billion is expected to support a participant level of 1,047,000. By not paying allowances and other stipends in 1983, the budget request of $2.4 billion will support a participant level of 1,307,200. Further, administrative streamlining and focusing on outcome measures will permit more effective use of the dollars available, thereby permitting service to increased numbers of individuals.

SUMMER JOBS

Question: You propose eliminating the existing Summer Youth Jobs Program, consolidating it into a block grant. At the $1.8 billion level you recommend for block grant funding, how many summer youth jobs do you estimate will be provided, compared to the 700,000 to 800,000 jobs this summer? Wouldn't you expect summer jobs to be virtually eliminated in many communities if Federal funds were no longer earmarked--not because the jobs are unneeded, but because monitoring a short-term summer program is administratively burdensome?

Answer: The Summer Youth Program has been eight weeks of wage subsidy with no training and no lasting benefits. In addition, it has experienced many administrative problems, attempting to serve too many people in too short a time without meaningful employment or training.

The Administration's proposed Job Training Act focuses on youth on a year-round basis and will provide meaningful training to assist them in obtaining unsubsidized jobs. Although there will not be a Nationally funded separate summer program during the summer of 1983, the Governor and the substate service delivery area could effectively administer a summer program component providing classroom training and on-the-job training activities. In addition, we expect the private sector to sponsor summer jobs for youth through local Chambers of Commerce and the National Alliance of Business. Other groups and State and local governments will also provide jobs through their own resources.

We cannot estimate the number of summer training opportunities the States will opt to fund. Since wage subsidies are prohibited under the Administration's bill, we expect the overall program to provide more effective training services to more participants in FY 1983 than CETA will in FY 1982.

HIGH YOUTH UNEMPLOYMENT

Question: Within the youth employment and training field, controversy exists over the reasons for high youth unemployment. One side argues that youth unemployment is a demand problem--the private sector is not providing jobs to youths; another side argues that it is a supply problem--youths are not qualified or "ready" for work. Where does the Labor Department stand on this issue? What do you see as the reasons for the high youth unemployment, especially among black youths, and how does the Labor Department plan to solve the problem?

Answer: The President's overall economic recovery program is the best vehicle for reducing unemployment, including youth unemployment. The Administration's proposed legislation, by targeting economically disadvantaged out-of-school youth as one of the two principal groups to be served, is designed to provide them with the necessary training to enable them to obtain jobs in skill shortage occupations. By providing these youth with the tools necessary to obtain unsubsidized employment, the Administration hopes to alleviate the shortage in supply of youth who not only are available, but also are prepared to accept jobs in the private sector.

OLDER WORKERS' RETIREMENT TRENDS

Question: There is also some indication that older workers will choose not to retire at current retirement ages. What research has been done in this area?

Answer: There is no indication in data available to DOL that older workers will not choose to retire at current ages for the forseeable future. To the contrary, over the 5 years from 1976-1980 the data show that work experience among men and women in all age groups over 60 has continued its historical decline. The 1981 data are not yet in, but a further decline is expected.

DOL and other Departments have carried out several studies which estimate future labor force participation responses to recent changes affecting older workers. Four separate studies of the impact of raising the mandatory retirement age to 70 showed that more workers than otherwise would continue to work because of this policy change. The studies did not indicate, however, that the rate of labor force participation of older workers would rise. Rather, they indicated that the rate of participation would fall less than expected. This same finding is true for the total elimination of mandatory retirement.

A more recent DOL study examined the potential impact of requiring employers to offer actuarially fair increases in private pension benefits after employees reach normal retirement age (about half of the defined benefit plans now permit no benefit increases after normal retirement age). This study indicated a 5 percentage point increase in the labor force participation of men if such a policy were instituted. Again, the impact is most likely a slowing of the downward trend in the older worker labor force participation rather than an increase in the rates above those currently prevailing.

At the same time that a number of factors are encouraging some workers to stay in the labor force a little longer, other factors are working in the opposite direction. A recent study by the Employee Benefit Research Institute (EBRI) estimated that 80 percent or more of family units with aged persons will be eligible for private pensions by the turn of the century. In the meantime, each successive retirement cohort will have more workers with such pensions, and, hence, an additional incentive to retire at age 65 or earlier. In addition, each successive cohort of older workers will have more members who are eligible for attractive early retirement benefits. These trends, which will encourage pre-age-65 retirement, will be reinforced by recent changes in the law regarding IRA's and other forms of increased saving for retirement.

DOL has not had time to fully assess and reaffirm the EBRI findings on private pensions and some of the other research done in this area. However, substantial research has been done, and, based on an analysis to date, it seems highly likely that over the next decade the forces favoring earlier retirement will overpower those working in the opposite direction. Two factors, however, could change this. The first is a major change in Social Security, such as a later retirement age or substantial incentives for delayed retirement. The second is a shortage of young workers which greatly increases the demand for older workers who are willing to work in "post-retirement" jobs with reduced responsibilities.

TEENAGE UNEMPLOYMENT

Question: What does your research show regarding the "Teenage Unemployment Problem" over the next decade?

Answer: Labor Department's research shows that the problem is not so much an overall teenage employment problem, but a problem among minority teenagers. The percent of white teenagers with jobs has actually risen steadily since the 1960's. This is in marked contrast to the fraction of white males of any other age group that are employed, which has declined over the 1970's. On the other hand, black males aged 16-19 have undergone a drastic decline in employment. In 1954, 52 percent of all black male teens had a job; in 1981, only 26 percent did. Almost all of the decline took place before 1971, but black teen employment is currently falling sharply.

According to research, the best explanation for the huge decline for young blacks during the fifties and sixties is the mechanization of agriculture and the minimum wage. The 1950-1970 agricultural revolution displaced black teenagers from farms. The employment ratio of 16-19 year old blacks in the rural south, for example, fell from 63 percent to 26 percent between 1950 and 1970. The minimum wage acted as a barrier which precluded many black teenagers displaced from farmwork from finding employment in the nonagricultural sector. This was especially true in the South.

Since 1971, black teen employment has fallen seven percentage points. In the 1974-75 recession they lost jobs and never made it back to their old level. Employment ratios are falling again but we are not sure why. Increased school enrollment rates may account for some of the decline, but clearly other factors are important.

It is particularly noteworthy that black teenage employment has fallen significantly and continuously, despite massive expenditures on employment and training programs. The downward turn in the employment pattern of teenage work would indicate that unless alternative policies are developed which would reduce the high cost of employing teenagers (e.g., a youth subminimum wage) and/or restructuring of employment programs, the decline will continue over the next decade.

EMPLOYMENT OF "BABY BOOM" GENERATION

Question: The "baby boom" generation will be in their 20's and 30's over the next decade, and many problems in the world of work are foreseen. What does your research show?

Answer: One of the main methods of examining the behavior of the baby boom generation is the National Longitudinal Survey. This survey is financed by the Labor Department. Since 1966 this survey has followed a sample of young men and one of young women; both groups are of baby boom age. The NLS data is quite unique and as a result has been carefully examined. Two examples of the kind of information available from the NLS are reported here. First, teenagers who have more work experience and knowledge of work end up with higher paying and higher status jobs. Second, youth are very interested in work as is shown in that more than half were working or looking for work. In addition, the study shows that many are willing to take jobs at a subminimum wage.

Research directed toward the current and future problems for the baby boom generation is focused on the labor market. The performance of the youth labor market is compared to the rest of the labor market. The comparative labor market situation of younger workers is worsening because of their increase in numbers. This study also finds that the worsening situation has meant wages are lower rather than increasing joblessness.

MISMATCH OF WORKERS AND JOBS

Question: There has been considerable discussion about the mismatch of workers and jobs. What research have you done in this area?

Answer: Labor Department research has focused on improving the fit between workers and jobs in a number of broad areas. Improved matching may involve labor supply or demand, so that research in a number of areas is relevant.

Recently, the Department has begun an extensive examination of how workers laid off from auto-related industries are transferred to other sectors of the economy. This is being examined in the Downriver project, a large scale demonstration which, within the next year, should yield knowledge about the problem and the effectiveness of alternative program strategies to facilitate the matching process. We are also considering a project aimed at gauging the effect of Defense Department procurements on skill shortages and surpluses.

Question: What occupations and areas of the country will be most affected by automation?

Answer: According to the results of a survey conducted by Carnegie-Mellon University, nearly 7 percent of the total U.S. workforce are in the types of jobs which currently are, or soon will be, in the domain of the industrial robots. Nearly one-half of these jobs were estimated to be in the metal working trades. The area of the country that will be most affected are those in which heavy industry-automobiles, appliances, and chemicals are concentrated. Thus, the impact will be relatively strong in the industrial belt around the Great Lakes.

Question: What opportunities are there for United States companies to create new jobs, to replace lost jobs?

Answer: The prospect of robots replacing humans in the workplace raises in many minds the specter of mass unemployment. There are, however, several reasons why this fear would seem to be exaggerated. First, by lowering the cost of production, technological improvements spur output growth, which, in turn, raises the need for more workers. The output growth will be especially marked if the U.S. gains a competitive advantage over foreign producers by taking the lead in the new technology. Second, increased use of robots will increase the demand for workers in occupations such as engineering, which are needed in robot production and maintenance. Third, the job losses from robotization will be concentrated in certain manufacturing occupations. There is considerable flexibility in the U.S. labor market for other occupations to absorb the displaced workers in the long-run. This flexibility is evidenced by the large shift of workers away from manufacturing and toward services, government, and finance which has been taking place in the U.S. in recent decades. Finally, the evidence from recent economic history may also assuage any fears about the impact of robotization on the labor market. Increased use of robots can be viewed as part of the broad trend toward development of labor-saving technology, such as computers. This trend has not been accompanied by any reduction in the overall employment rate.

EMPLOYMENT SERVICE STAFF CUTS

Question: Congress just finished enactment of an urgent supplemental to restore Employment Service staff of 24,800 positions, as requested by the Administration. What is the rationale for the Administration now requesting a reduction in Employment Service staff to 21,800 for Fiscal Year 1983? How many more staff will the Employment Service lose, if Congress accepts the Administration's proposals to terminate the Work Incentive Program and replace CETA with reduced block grant funding?

Answer: The Fiscal Year 1983 budget request provides for 21,800 Employment Service staff a decrease from the 1982 staff year level range of between 23,300 to 24,800. The rationale for the decrease is to reduce the labor market intermediary role of the public employment service system and will substitute greater reliance on private sector initiatives to seek out and hire jobseekers.

All legally mandated services will continue unabated, as in priority service for veterans, the Disabled Veterans Outreach Program, services to migrants and seasonal farmworkers, and the handicapped.

Every effort will be made to improve services to unemployment insurance claimants including the long-term unemployed on extended benefits, relative to other target groups.

It is estimated that the Employment Service will lose almost 5,000 staff funded from the Work Incentive Program with the termination of that program in Fiscal Year 1983. The impact on Employment Service staffing of new legislation replacing CETA is unknown at this time pending final passage of the legislation.

ELIMINATION OF TRADE ADJUSTMENT ASSISTANCE

Question: The President's Budget proposes total elimination of both trade adjustment assistance unemployment benefits and retraining of workers adversly affected by foreign imports. Instead, they would be served by regular unemployment benefit and job training programs. To what extent do you anticipate these cutbacks will accelerate demands for trade restriction on foreign imports? Are any new initiatives being planned for dislocated workers? What would be the overall impact on the American economy of protective tariffs in the auto and steel industries?

Answer: The trade adjustment assistance program was designed to deal with particular firm and worker displacements related to increased import competition. It was never intended to be the sole remedy to industry-wide problems related to increased foreign competition.

Industries subject to foreign competition may be granted relief in the form of higher tariffs or quotas. Adjustment assistance may be available even if higher tariffs or quotas are imposed. The auto industry sought import relief in 1981 and was denied such relief because the International Trade Commission found that imports were not a substantial cause of the problems of the industry. At the same time, the Labor Department had certified many thousands of auto workers as eligible because they had satisfied a less rigorous test for adjustment assistance benefits.

Separately, the steel industry was provided some insulation from import competition under the Trigger Price Mechanism that reduced the extent to which imported steel could be priced under domestic steel.

The Administration has proposed new job training legislation--the Job Training Act of 1982--which is targeted primarily on members of AFDC families and out-of-school youth, aged 16 through 25. However, the bill also contains provisions addressed to the training needs of dislocated workers. The legislation provides that States may use up to 10 percent of their training grants under the bill to serve persons with special labor market disadvantages other than members of the two primary target groups. These additional groups may include displaced workers. The bill also provides that States with severe displaced worker problems may use up to an additional 5 percent of their training grants to serve these workers under a Federal-State matching arrangement. In addition to authorizing the appropriation of $1.8 billion for grants to States for training purposes, the bill also authorizes the appropriation of $200 million for use by the Secretary in providing financial assistance to agencies and organizations to train persons from various groups with special labor market disadvantages, including displaced workers.

The Department of Labor is also conducting pilot projects to determine the best methods of assisting workers displaced by plant closings and mass layoffs. One of these pilots, known as the Downriver Community Conference Economic Readjustment Program, is located in Wayne County Michigan, an area experiencing high unemployment and extensive mass layoffs. The program focuses on some 2,800 workers displaced from six plants in the area. In addition, the Department recently funded a project to assess the transferability of auto industry skills to aerospace and defense industry needs.

The availability of adjustment assistance to workers of both the steel and auto industries had some impact on efforts to limit import competition. As long as it appeared that import problems were localized and likely to be of a temporary nature, import relief was not an industry objective. However, once the problems became industry-wide, industry-wide relief, in the form of quotas or other import restraints were sought by the industries with varying degrees of success.

The problem with relying on a restrictive import policy to deal with particular industry problems is that over time the burden of that competition is shifted to other groups in the economy. So, over time it is likely that fewer jobs are created in the protected industries and in the economy generally because U.S. industries become less competitive as a result of the import restraints. The negative impact on U.S. employment could be relatively quick if other countries retaliate against U.S. export industries because of restrictions imposed by the United States on the exports of other countries to protect U.S. industries subject to increased and harmful foreign competition.

SPECIAL ELECTION RE-RUNS

The Labor-Management Services Administration is supervising two national election re-runs -- for the International Association of Fire Fighters and the American Federation of Government Employees.

Question: What is the status of these election re-runs?

Answer: As of April 2, 1982, LMSE has completed supervising elections of delegates in 92 percent of the American Federation of Government Employees affiliates. Approximately 25 percent of the International Association of Fire Fighters locals have been completed, or are near completion. It is estimated that both elections will be completed by the end of May.

Question: How much money and staff is being utilized to supervise these elections?

Answer: Through March 20, 1982, a total of 38.77 staffyears were expended on both elections. A preliminary estimate shows that $199,212 was spent through the same period.

Question: Have you had to divert resources from other Labor Department programs to handle this election re-run workload?

Answer: Fifty-five additional personnel were obtained from other agencies within DOL. ESA provided 25, with OSHA and MSHA each providing 15. These assigned personnel have contributed 7 staff years of work in the two re-runs through the end of March.

OUTLOOK FOR COLLECTIVE BARGAINING

Many researchers forsee the 1980's as a major readjustment period for unions.

Question: What does your research show, and how would major collective bargaining be affected?

Answer: Labor-management relations research in the Department of

Labor in recent years has focused primarily on the administration and enforcement of laws under its jurisdiction. Although the Department has not attempted to forecast what would happen in the 1980's, there were three studies funded by it which pertain in part to your inquiry. One study, Collective Bargaining: Contemporary American Experience, conducted for the Department by the Industrial Relations Research Association (IRRA), analyzed collective bargaining in ten public and private industries over several decades. In its concluding chapter, it parallels the finding of the many researchers you refer to; namely, that unions may undergo readjustment in the 1980's. However, it adds that unions in the ten industries studied were in fact already undergoing long-term readjustments during the 1960's and 1970's. The readjustments vary from union to union and industry to industry. In trucking and coal, highly centralized unions were experiencing moves towards decentralization whereas construction industry unions saw a likely shift in internal power if the industry's fragmented bargaining moved more towards a large area or regional structure. There is more detail on this latter aspect in a contract study by Cornell University, The Bargaining Structure in Construction: Problems and Prospects.

The likely impact on major collective bargaining of union readjustment in the 1980's is not directly addressed in any Department study, but almost by definition major collective bargaining involves what the IRRA refers to as a mature relationship. That is to say, the parties have developed their internal organizations for bargaining and the necessary staff, or bureaucracy, to implement bargaining, which has become highly professionalized over the years. This mature relationship, then, must act or react in situations where unsettling exogenous forces are thrust against it and create varied environments for bargaining: inflation, unemployment, technological change and its consequent impact on productivity, the pressure on competitive firms to go nonunion, continuing geographical and occupational shifts, etc. The IRRA study notes that unions in collective bargaining generally are concerned with "price" (i.e., wages and other forms of compensation) and "power" (i.e., the contractual allocation of rights of employees and unions in the workplace and work process as against the rights of management in the direction of the work force). Under an expanding economy and industry, unions are likely to expand "price" and "power," but under an economy marked by inflation, market uncertainties and cost pressures on management, the climate is not favorable for the enhancement of union "price" and "power" objectives. Unions, according to the IRRA study, are more likely to hold their own than to innovate and to emphasize job security issues.

Prof. Thomas A. Kochan, MIT, author of Labor-Management Relations Research Priorities for the 1980's, another Department study, notes among his assumptions for the 1980's that efforts will be made to improve the climate for labor-management relations and thereby reverse the trend toward greater polarization that union and employer has experienced. He also assumes that efforts will be made to stimulate changes in labor-management relations in order to help the parties to adapt to changing economic conditions and to improve the performance of labor-management relationships. Recent evidence of "givebacks" with job security as a quid pro quo, especially in major bargaining situations, confirms Prof. Kochan's prediction and further underscores the flexibility of the parties and their willingness to accommodate. Under these circumstances, the adversarial relationship seems to give way to cooperation, and the climate improves for union and management to examine where their interests are mutual. It is hoped that the recent proliferation of cooperative labor-management programs is further evidence of a long-term growth of mutual understanding and respect.

ELIMINATION OF DISCRIMINATION IN EMPLOYMENT

Question: To what extent do the Office of Federal Contract Compliance Programs (OFCCP) and the Equal Employment Opportunity Commission (EEOC) overlap or duplicate each other's equal employment opportunity enforcement efforts?

Answer: While it is true that both OFCCP and EEOC are responsible for laws prohibiting employment discrimination, the laws the two agencies implement and their concerns are quite different and there is little resulting overlap. Title VII of the Civil Rights Act of 1964, which EEOC enforces, prohibits employment discrimination; "affirmative action" as prescribed by EEOC is limited to those actions necessary to correct discrimination found through investigation. EEOC concentrates its efforts on resolving individual complaints of employment discrimination.

In contrast, OFCCP's authorizing laws not only prohibit discrimination, but require the contractor to undertake affirmative action regardless of whether a finding of specific discrimination has been made. Affirmative action under OFCCP's laws is undertaken to increase the utilization of various groups (e.g., minorities, women, Vietnam era veterans and handicapped people) in employment areas to which they have traditionally had little or no access. Affirmative action derives from the fundamental principle that those firms who profit from tax-generated dollars have a higher standard of EEO performance than have employers generally. OFCCP, rather than being concerned with individual complaints of discrimination, is thus concerned with the broad employment practices of Federal contractors and with cases of discrimination involving entire groups of employees or employment applicants.

Question: To what extent have inconsistencies and duplication between these agencies been eliminated?

Answer: Since 1970 OFCCP and EEOC have operated under a Memorandum of Understanding (MOU) which minimizes enforcement overlap and ensures coordination. the MOU has been revised twice (in 1974 and 1981), and the agencies will be meeting soon to update their coordination practices. OFCCP and EEOC coordinate at both the field and headquarters levels to ensure that they do not conduct simultaneous or repetitive review of the same company establishments and that only one of the agencies assumes responsibility for handling each complaint. They also coordinate at the policy level in the development of regulations, policies, and procedures to ensure consistency in their interpretations of anti-discrimination laws. Two Executive Orders (12067 and 12291) require that OFCCP and EEOC undertake this kind of coordination.

Question: What future plans are in the works to bring about a more coordinated enforcement strategy between these agencies? What is your opinion of the suggestion that transferring the OFCCP functions to the EEOC would improve the efficiency of Federal efforts to eliminate duplication of enforcement efforts?

Answer: Although it first may appear that having one civil rights agency for employment is most efficient, merging OFCCP into EEOC would not improve program operations for either agency:

- First, the two agencies have distinctively different laws and concerns (as I discussed earlier).

- Second, affirmative action, which is aimed at increasing the utilization of identified groups, is consistent with other responsibilities the Department of Labor has regarding labor supply (e.g., apprenticeship and training) and employment standrds (particularly in Government contracting, such as undedr the Service Contract Act and the Walsh-Healey Public Contracts Act, etc.); having these related functions under one Department facilitates their coordination.

- Thirdly, the nature of operations of the two agencies are differenc; OFCCP mainly conducts compliance reviews resulting in conciliation of steps the contractor will undertake to comply with its contractual affirmative action responsibilities, while EEOC uses litigation and pre-litigation settlement techniques to settle specific cases of discrimination.

DAVIS-BACON ACT

Question: What is the current status of the Department's proposed changes in the administration of the Davis-Bacon Act?

Answer: The Department has recently completed the analysis of the comments received in response to the August 14, 1981 proposed revisions to the Davis-Bacon regulations. We hope to have final rules published in the very near future.

Question: How much will these changes save and what is the basis for your estimates?

Answer: As indicated in the August 14 proposal, the Department's initial Regulatory Impact Analysis concluded that the proposed changes would result in cost savings of $670 million annually for both contractors and the Government while still assuring protection of local labor standards. The individual components of the anticipated cost savings are summarized as follows:

(1) The revised method of determining prevailing wage rates, which would eliminate the so-called "30 percent rule," is expected to result in cost savings of at least $120 million per year.

(2) The proposal to allow an increased use of semi-skilled helper classifications on covered projects should save about $450 million annually.

(3) The proposal to eliminate the requirement that covered contractors submit weekly payrolls to the contracting agencies is estimated to save $100 million annually.

These estimates could change somewhat depending upon the form of the final rules which are adopted.

Question: How much money is the Department spending to administer the Davis-Bacon Act?

Answer: The Department's budget estimate allocates approximately $5 million for the administration of the Davis-Bacon Act.

Question: Does the Department have any legislative proposals for repealing or amending the Davis-Bacon Act?

Answer: The Department has no legislative proposal for repealing or amending the Davis-Bacon Act. We believe that our regulatory changes will result in a more efficient, cost-effective administration of the Act and obviate the need to consider its repeal.

VOLUNTARY COOPERATION

Question: What steps are being taken to strengthen voluntary cooperation of employers and employees in eliminating workplace hazards?

Answer: OSHA has instituted a new targeting system to examine an establishment's injury records to determine lost workday injuries. As an incentive to continue efforts to eliminate workplace hazards, employers will not receive further inspection if their injury rate is low enough to indicate safe working conditions. We believe this approach serves to encourage the voluntary provision of worker protection from workplace hazards.

Employers are showing increased willingness to work with us in solving workplace problems. The agreement between ASARCO and the United Steelworkers under which ASARCO will comply with OSHA's inorganic arsenic standard while maintaining the competitive edge of the East Helena, Montana lead smelter is indicative of this new spirit of cooperation.

Employer/employee cooperative efforts are the central focus of the suggestions for voluntary protecton programs published for public comment in January of this year. These ideas include joint safety and health committees, less structured forms of employee involvement in safety and health and area-wide labor/management cooperative efforts such as the one in the Denver construction industry.

OSHA STATE PROGRAMS

Question: What progress is being made to improve State OSHA Programs and help states qualify for final approval of their programs?

Answer: Our goal is to develop a framework which will allow greater autonomy to states with effective programs and integrate them into the overall OSHA program. We are acting to increase cooperation by establishing the kind of partnership we believe was envisioned by the Congress.

The Assistant Secretary for OSHA has been actively involved with the State plan designees by meeting quarterly to discuss on-going OSHA activities and any problems that the states may be encountering. Concurrent federal enforcement has been eliminated while the states' role in standards and policy development has been greatly strengthened by seeking their early input into the process. State participation in OSHA's management information system is being planned to enhance the usefulness of the existing data network. Additionally, the State plan monitoring system is being extensively revised to assure reliance on state-submitted, objective data in performance evaluations.

Proposed language in the FY 1982 supplemental and the FY 1983 budget would allow OSHA to grant final plan approval to eligible states. States with compliance staffing levels equivalent to Federal staffing levels would be eligible for such consideration.

OSHA IMAGE

Question: Is there evidence that you have been able to reduce the level of controversy and the adversarial spirit that have characterized OSHA actions in the past?

Answer: There are a number of indications that negative attitudes about OSHA are changing. For example, the rate of employer contest of OSHA citations and penalty assessments has dropped dramatically. In FY 1980 this rate reached 23 percent of all OSHA citation; currently, the rate is about 8 percent. In addition, employers have been receptive to our efforts to work with them to eliminate workplace hazards. We recently reached an agreement with ASARCO and the United Steelworkers under which ASARCO will comply with OSHA's inorganic arsenic standard while maintaining the viability and economic competitiveness of the East Helena, Montana lead smelter. OSHA and the American Electronics Association have agreed to cooperate in designing job safety and health training and technical materials for member companies. Further evidence of the changed attitude of the business community is evidenced in the initial results of employer-employee surveys of the performance of OSHA compliance officers. Employer responses overwhelmingly indicate that OSHA employees are doing their jobs in a professsional, non-adversarial manner.

COMBINING OSHA AND MSHA

Question: Have you considered combining MSHA and OSHA into one Administration in the Department of Labor? How much savings would such a consolidation achieve?

Answer: The issue of having one Federal Safety and Health Agency has been debated many times over the years. Federal involvement in mining began with the creation of the Bureau of Mines in 1910 and other worker protection acts followed.

With the passage of the Occupational Safety and Health Act of 1970 Congress stressed the need for protection of all workers who were not previously covered by specific legislative authority. Furthermore, in enacting this broad legislation, Congress recognized that associated with certain occupations were unique hazards that could best be monitored by separate organizations possessing expertise in these specialized areas. The airline industry and mining are only two examples of industries whose workers are protected by specific legislation.

As late as 1977 Congress reaffirmed their desire to continue to separate protection of this Nation's miners. In passing the Federal

Mine Safety and Health Amendments Act of 1977 the Congress confirmed their desire to have an administration separate from OSHA when they specifically established in the Department of Labor a Mine Safety and Health Administration headed by an Assistant Secretary for Mine Safety and Health appointed by the President, by and with the advice and consent of the Senate.

MSHA and OSHA have had since 1974 a Memorandum of Understanding that administratively addresses any jurisdictional conflict that may arise between the two Agencies.

To assure the continued applicability of the Memorandum of Understanding, a task force jointly chaired by Mr. Auchter and Mr. Ford has been established to review the agreement and those industries where jurisdictional conflict may occur.

I feel that this working group and the Memorandum of Understanding are appropriately addressing any issue that may arise.

MSHA/OSHA SAND AND GRAVEL TRANSFER

Question: Your budget justification does not assume transfer of surface stone, sand and gravel inspection activities from MSHA to OSHA, even though the continuing resolution enacted this transfer into law. If the Congress does not go along with your proposal on sand and gravel, how much money should be deducted from your fiscal year 1983 budget.

Answer: MSHA's 1983 budget included $4,308,000 for sand and gravel operations.

Question: Have you found adequate solutions to administrative problems involved in transferring jurisdiction over stone, sand and gravel operations from MSHA to OSHA?

Answer: MSHA and OSHA have operated under a memorandum of understanding for several years that provides for administratively addressing jurisdictional conflicts that may arise between the two agencies.

In addition, a task force jointly chaired by Mr. Auchter and Mr. Ford has been established to review the agreement and those industries where jurisdictional conflicts may occur.

I feel that this working group and the agreement can appropriatly address any issues that may develop.

IMPACT OF ROBOTICS

Question: How do you assess the likely impact of the American economy and workforce in the 1980's of the "Robot Revolution" that has been gaining widespread media attention?

Answer: As an old economist, Kurt Wicksell, once said, "technological advance is the short-run enemy of labor, but in the long run it is labor's best friend." A higher standard of living can only be achieved by economic growth, and the primary engine of economic growth is higher productivity; that is, having the machines do the work of men. This was the case in the industrial revolution, in the agricultural revolution of the 1950s and 1960s, and is likely to be the case in the 1980s.

There will undoubtedly be job displacement, but we should distinguish this displacement from permanent unemployment. Workers in some industries and occupations will be displaced from their current jobs. At present, robots can only perform highly repetitive and tedious tasks. It is these kinds of jobs that will be eliminated. But if these workers are retrained by private industry, they will find better paying and more challenging jobs elsewhere.

Virtually, everyone agrees that more jobs will be lost in those countries and companies that do not automate production processes than in those that do. The garment industry provides a good indication of how technological progress might actually help us regain some jobs that have been lost to other countries. The microprocessor will significantly reduce labor requirements in the industry. Although fully-automated garment production is still a long way off, this technological change is laying the foundation for a much less labor-intensive process that will erode the comparative advantage of cheap labor in developing countries.

SUBCOMMITTEE RECESS

Senator BYRD. The subcommittee will now stand in recess until tomorrow when we will meet in this room at 10 a.m. to discuss funding for employment and training administration programs.

Thank you very much.

Secretary DONOVAN. Thank you, Mr. Chairman.

[Whereupon at 4 p.m., Tuesday, April 20, the subcommittee was recessed, to reconvene at 11 a.m., Wednesday, April 21.]

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1983

THURSDAY, FEBRUARY 11, 1982

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 8:35 a.m. in room 1114, of the Everett McKinley Dirksen Senate Office Building, Hon. Quentin N. Burdick presiding.

Present: Senator Burdick.

RAILROAD RETIREMENT BOARD

STATEMENT OF WILLIAM ADAMS, CHAIRMAN

ACCOMPANIED BY:
- EARL OLIVER, MANAGEMENT MEMBER
- CHARLES CHAMBERLAIN, LABOR MEMBER
- NORMAN SOLOMON, CHIEF ACTUARY
- JAMES BROWN, CHIEF EXECUTIVE OFFICER
- PAUL COTE, BUDGET DIRECTOR

SUBCOMMITTEE PROCEDURE

Senator BURDICK. Today we begin our regular fiscal year 1983 appropriations hearings for Labor, HHS, and Education Appropriations Subcommittee.

This morning we will hear testimony from three related agencies under the subcommittee's jurisdiction: The Railroad Retirement Board, the ACTION agency, and the Soldiers' and Airmen's Home.

We will begin with testimony from Mr. William Adams, Chairman of the Railroad Retirement Board.

Mr. Adams, please introduce the people with you and proceed with your prepared statement as you wish.

Mr. ADAMS. Thank you, Mr. Chairman.

INTRODUCTION OF ASSOCIATES

I am William Adams, Chairman of the Railroad Retirement Board. On my left is Mr. Charles Chamberlain, labor member; to his left is

Mr. Earl Oliver, management member of the Board; on his left is our Chief Actuary, Mr. Norman Solomon; on my right is our Chief Executive Officer, Mr. James Brown; and on his right our Budget and Fiscal Director, Mr. Paul Cote.

PREPARED STATEMENT

Mr. Chairman, in the interest of expediting the hearing, we have prepared a written statement and a budget justification for our 1983 budget request under current law. With your permission I would like to submit that for the record and submit to questions.

Senator BURDICK. Received.

[The statement follows:]

STATEMENT OF WILLIAM ADAMS

Mr. Chairman and Members of the Committee, before discussing the specifics of our 1983 budget request, I would like to furnish some general information regarding the Railroad Retirement Board.

Programs Administered by the Railroad Retirement Board

The Railroad Retirement Board administers a regular retirement system for the payment of retirement and disability annuities to railroad employees, annuities to their spouses, benefits to their survivors, and payment under certain conditions of supplemental annuities, in addition to regular annuities. The Board also: (1) administers a separately financed system for the payment of unemployment and sickness benefits to qualified railroad workers; (2) and participates in the administration of the Medicare program for persons covered by the Railroad Retirement Act; and (3) has certain responsibilities under Milwaukee Road, Rock Island and Regional Rail Reorganization Acts.

Structure of the Board

The Railroad Retirement Board is administered by a three-member Board appointed by the President, by and with the advice and consent of the Senate—one member upon recommendation of representatives of employees, one upon recommendation of representatives of employers, and one, the Chairman, without designated recommendation. The terms of office are five years and are arranged so as to expire in different calendar years. The present management member was first appointed August 5, 1977, and was reappointed on October 20, 1978, for a term beginning August 29, 1978. The present labor member was appointed on October 10, 1977, and was reappointed on July 27, 1979, for a term beginning August 29, 1979. The present Chairman was appointed on February 15, 1978, for a term beginning August 29, 1977.

Financing the Railroad Retirement Program

The railroad retirement system is financed by taxes paid by railroad employees and employers into trust funds. The amounts needed for benefit payments and administrative expenses are derived from these trust funds. Congress must approve the amounts to be spent for administrative expenses.

Payments for Federal Windfall Subsidy

Under the Railroad Retirement Act of 1937, an individual engaging in covered employment under both the Railroad Retirement Act and the Social

Security Act could, under certain conditions, receive benefits under both Acts. The weighing factors inherent in the social security benefit formula produce a proportionately higher benefit for employees with low earnings and short service. Therefore, dual beneficiaries receive a higher return for the taxes contributed since in most instances the social security coverage is only supplementary to their regular railroad employment. Even though there is a financial interchange arrangement between the Railroad Retirement Board and the Social Security Administration whereby the latter reinsures benefits paid by the Board, the cost of this higher return was borne by the Railroad Retirement Account. This was a major cause of the poor financial condition of the system in the early 1970's. In order to improve the rail industry pension's financial condition, the Railroad Retirement Act of 1974, P.L. 93-445, coordinated railroad retirement and social security. This prospectively resolved the dual benefit problem.

However, it was generally considered unfair to eliminate dual benefits entirely, especially for those already retired or close to retirement when the 1974 Act became effective. The 1974 Act, therefore, provided that dual benefits which were considered vested at the end of 1974 be given back in the form of a benefit called the windfall. The Act set up complicated rules for calculating this benefit.

The 1974 Act also specified how windfalls were to be financed. The Act authorized 25 level annual appropriations from the general funds, one for each fiscal year from 1976 through 2000. It gave the Board the responsibility for determining the amount of the appropriation and stated that the amount was to be re-evaluated periodically. The amount was to be enough to pay for the windfall benefits, many of which will be payable after the year 2000, and for any loss of interest caused by paying the benefits.

The original estimate of the level appropriation required to finance the windfall, made before enactment of the 1974 Act, was $250 million per year for each year from 1976 through 2000. This estimate was revised substantially upward, to $350 million in 1976 and then to $499 million in 1979, with the latter estimate increased by any inflation occurring after 1980. The major reasons for these upward revisions were: a) The Board had little data on which to base the original estimates. Much larger numbers of beneficiaries, particularly spouses, were found to be qualified for the windfall benefit than had been predicted; b) The high rate of inflation caused windfall benefits first awarded after 1974 to be much larger than the original estimates had foreseen; c) not realizing the extra investment income permitted under a special provision added in 1974; and d) other estimating adjustments. The Carter Administration limited the windfall subsidy appropriation to a maximum of $350 million annually.

The Omnibus Budget Reconciliation Act of 1981 amendments to the Railroad Retirement Act restructured windfalls in line with the negotiated agreement advanced by rail labor and management. Starting in October 1981 windfall benefits are paid from a separate account, the Dual Benefits Payments Account, and windfall appropriations are made to that account. The appropriations are on a pay-as-you-go basis rather than a level-payment basis. This means that, starting in fiscal year 1982, windfall payments are restricted to the annual appropriation for that year. If the appropriation is less than required, the Board must reduce windfall benefits to a level which the amount appropriated will cover.

Condition of the Fund

Enactment of amendments to the Railroad Retirement and Railroad Retirement Tax Acts in 1981, contained in P.L. 97-35, strengthened the system's financial outlook. Problems, however, may still exist in the near future.

The payroll tax is the major source of income to the railroad retirement system. The amount of money which the tax provides depends on the number of workers covered by the tax, that is, the level of railroad employment. Calculations show that, in the near term (the period of the next 10 years), the financial stability of the system will be extremely sensitive to the level of railroad employment. At the time the 1981 amendments were developed, it was assumed that employment would decline to an average of 500,000 in 1983 and remain at that level indefinitely. Under this employment assumption, the system will be adequately funded, needing to borrow only a small portion of what the amendments allow. This assumes favorable experience with respect to inflation and the other assumptions on which the legislation was based.

Economic developments since the amendments were enacted, however, cause this employment assumption to seem optimistic. The railroad labor force had already declined from 514,000 in July 1981 to 477,000 in December 1981, the latest month for which figures are available.

It has been estimated that, if employment in the industry drops to 470,000 by 1984 and remains at that level, the Board would exceed its borrowing authority under the amendments, but not until 1990.

In any event, the provisions of P.L. 97-35 require the Board to advise the President and the Congress if it expects to borrow in any fiscal year 50 percent or more of the amount it is authorized to borrow on a limited, short-term basis under the amendments enacted by that public law. Within 180 days after the Board issues such a report, which is due no later than April 1 of any fiscal year in which this limitation is exceeded, representatives of rail labor and management are required to submit separate or joint funding proposals to preserve the system.

Milwaukee and Rock Island Railroad Legislation, Administration

The Board has certain responsibilities under the Milwaukee Railroad Restructuring Act and the Rock Island Transition and Employee Assistance Act.

The Board pays certain benefits to eligible employees, maintains employment lists, and has a role in settling disputes under employer-employee agreements in each case. At present, however, a Federal court injunction has stayed the implementation of the employer-employee agreement signed pursuant to the Rock Island Act. For 1983, for both programs, the Board is requesting an appropriation of $250,000 to fund its administrative expenses. Benefit appropriations are not requested by the Board, but rather by the Department of Transportation.

Regional Rail Reorganization Protective Benefits

You note that the Board is making no budget request for benefit payments under Title V of the Regional Reorganization Act of 1973, as amended. Beginning with fiscal year 1981, responsibility for requesting appropriations was transferred to the Department of Transportation.

Upon enactment of appropriations, the Department of Transportation transfers the funds to the Board for reimbursement to eligible claimants. So far in fiscal year 1982, $25 million has been appropriated. The Department of Transportation is presently transferring to the Board about $18 million for unpaid reimbursement claims from covered carriers which will be paid as soon as the funds are transferred.

The Department of Transportation is not requesting additional appropriations for 1983 because Title V was repealed by the Northeast Rail Service Act of 1981 (Subtitle E of P.L. 97-35, approved August 13, 1981). That Act replaced Title V with a new Title VII and provides protective benefits for certain ConRail employees who were formerly covered under Title V.

The Board is responsible for paying these protective benefits. In fiscal year 1982, a total of $85 million was appropriated for paying the benefits, and an additional amount for the Board's administrative expenses. Arrangements are now being made with the DOT to transfer benefit payments and on a quarterly basis, the amounts needed for administrative expenses. Presently, the Board estimates that $.75 million will be needed for administration in fiscal year 1982. Estimates have not been made for fiscal year 1983 because of the newness of the program.

Limitation on Salaries and Expenses - 1983

The amounts requested under this appropriation account title represent a limitation on the use of trust fund monies for the administrative expenses of the railroad retirement system. Repeated amendments to the basic Act present a continuing problem in attempting to keep abreast of workloads. These amendments culminated in the passage of P.L. 93-445, the Railroad Retirement Act of 1974, effective January 1, 1975, which completely restructured the railroad retirement system. The most recent were enacted in August 1981 with the passage of P.L. 97-35, the Omnibus Budget Reconciliation Act of 1981, which will simplify future benefit computations.

For fiscal year 1983, the budget request contains $44,080,000 as the Limitation on Salaries and Expenses. The major changes from 1982 are the removal of the one-time cost of relocating our headquarters offices in Chicago, Illinois and an increase in overtime. This budget reflects two major changes in Board operations. In fiscal year 1982, the Board requested and Congress granted a major increase in contractual funding for fiscal years 1982 and 1983. This budget contemplates continued use of our limited Agency personnel resources to process our current claims workload, and making major systems improvements through the use of contractual services.

The Board will also begin restructuring its current field office network of 76 district offices. As part of this plan, we shall offer to rail beneficiaries and workers "800" number toll-free telephone service, operating for an extended workday. As part of our automation efforts, we intend to develop an ADP system which permits fast access to our records by headquarters personnel. This new capacity will permit greatly improved responsiveness to telephoned inquiries. In addition, we will initiate cooperative, compensated arrangements with rail labor or management organizations to take retirement claims, much as we do now with "unemployment claims agents".

We have developed a strategic plan to take major steps forward in automating our post-adjudicative claims workload, which presently constitutes a large block of our staff time. We hope to move rapidly on converting our computer operations to the modern and efficient data base environment. We will install an automated budgetary and financial management information system and automated work measurement and productivity system. These are ambitious efforts, and we would appreciate your support as we continue these significant steps to improve Agency operations. These measures will enable us to improve service and at the same time reduce overhead costs.

Regulatory Activities

The Committee has also asked each Agency to indicate its regulatory activities. The Board is not a regulatory Agency in the sense of regulating private businesses. Our regulations primarily apply to individuals who apply for benefits under the Railroad Retirement Act and the Railroad Unemployment Insurance Act and to employers determined by the Board to be covered by these Acts. Since benefits under both of these Acts are based upon an individual's railroad industry service and compensation, we do require railroad employers to submit an annual report of creditable service and compensation for each employee. We estimate that the 535 railroad employers spend 47,062 hours completing these reports. There are eight other service and compensation reports which supplement, as needed, this basic annual report. We estimate that all eight of these combined, require railroad employers to spend another 7,091 hours in submitting these supplemental reports.

To maintain the Board's records of creditable service and compensation on each employee who has worked or is working in the railroad industry, in fiscal year 1983, the Board will spend $475,000 to maintain records related to the Railroad Unemployment Insurance Act and $873,000 to maintain records related to the Railroad Retirement Act.

These figures indicate that we place a relatively small regulatory burden on private business, and spend a relatively small amount of money to maintain the necessary information. Under the two Acts, this information is legally required to determine the individual's benefit and is the fundamental information source in adminsitering our programs.

Mr. Chairman, that concludes my opening statement. We would be pleased to respond to any questions you and Members of the Committee may have.

CHAIRMAN'S SUMMARY

Senator BURDICK. Do you have any short statement you would like to summarize?

Mr. ADAMS. Under the programs administered by the Board, of course, we administer a retirement program. Also, a sickness and unemployment insurance program. In the retirement program we also have a Federal windfall payment that comes from the old dual coverage of railroads and social security prior to 1974.

We also administer some benefit provisions recently enacted for the Milwaukee and Rock Island Railroads and under the Regional Rail Reorganization Act.

The Omnibus Budget Reconciliation Act of last year replaced the old title V Conrail labor protection provisions with the new title VII, which will be a new program for us this year.

The Rock Island program is currently being held up in court litigation. The date of that outcome is uncertain at the moment.

We have been administering benefits to employees of the Milwaukee Railroad, things like separation allowances, moving allowances, subsistence allowances in cases where they have been separated from the railroad involuntarily, not discharged for cause.

Now on the condition of our fund. Last year labor and management reached an agreement which was enacted as part of the Budget Reconciliation Act.

Senator BURDICK. I have been told that the people in the back of the room can't hear you as well. Would you get close to the mike.

Mr. ADAMS. Last year, as part of the Budget Reconciliation Act there was enacted a joint labor-management agreement to improve the actuarial soundness of the Railroad Retirement Fund. Based on the economic assumptions that went into that agreement the fund is theoretically sound through 1990.

Now there would be, even on the basis of that agreement, a possible cash flow problem because of our delay in receiving social security payments. We pay out the social security benefits in one fiscal year and the following fiscal year, through our financial interchange with social security, we will get paid for what we have spent. Due to that lag in time, in other words, by July 15 of this year, we will have received the interchange payment from social security which will reimburse us for the payment we made last fiscal year. So it's from something like a 9- to 21-month lag time before we get reimbursed.

With the fund balances depleting there was a possibility we might not have enough cash on hand in April 1982 to pay benefits due on May 1. To avoid that possibility the Budget Reconciliation Act does include some borrowing aurthority for the Board to go to the Secretary of the Treasury and ask for an amount of money which may be necessary to pay monthly benefits for that particular month, and the amount we could borrow would be measured against the amount of the interchange payment we have coming due in July.

We could never borrow in any one month more than what we need to pay benefits for that particular month. In the course of a year we could never borrow more than the payment we would have coming due the next succeeding July. As soon as that payment is received, any amounts borrowed from the Treasury would immediately have to be repayed with interest.

Other than the dollar figures in our budget request, I think that's a fair summary of our request.

Senator BURDICK. Very fine.

I suppose my first question is whether or not the Congress even——

MANAGEMENT MEMBER'S STATEMENT

Mr. OLIVER. Excuse me, Mr. Chairman. We have two other members of the Board who would like to be heard before questions start, if possible.

Senator BURDICK. Certainly.

Mr. OLIVER. I'm sorry for interrupting. I apologize. It wasn't made clear that three members would have something to say.

As explained in the prepared statement Mr. Adams submitted our agency is headed not by one person but by a tripartite board. One member comes from and represents railroad management; one member comes from and represents railroad labor, Mr. Chamberlain; one member presumably represents the Federal Government or the public.

The three members have equal voice and equal vote, and unless at least two of them are in agreement, the Board, as a board, neither acts nor speaks.

The statement Mr. Adams has submitted is not a statement of the Board and does not represent the position of the Board.

Until yesterday afternoon I had not seen it in its present form. I had seen a draft submitted some time ago to OMB, to our budget examiner at OMB, for approval, but the final product as he approved it substantially alters the draft submitted.

As the representative of railroad management on our Board I cannot endorse either the budget and personnel limitation our OMB examiner has suggested for 1983 or the statement in support of it he directed be made.

First of all, full funding of the social security dual benefit would require $430 million in 1983. The budget proposal calls for only $350 million.

Second, the cost of administering the Railroad Retirement Act and the Railroad Unemployment Insurance Act is paid entirely from contributions required of employers and employees, but mostly employers.

Spokesmen for railroad management have said repeatedly, both to committees of the Congress and OMB, that rail management opposes the personnel cuts our OMB examiner has been making that impair the Board's ability to carry out its functions.

I intended to quote here one of those statements, but I will not do so in the interest of time.

In my opinion as the management member of the Board, rail management not only would not endorse the crippling cuts in personnel now proposed but would support restoration of former personnel levels and would do so in full recognition of the fact that the railroad industry would pay the full cost of restoration.

In my opinion as the management member of the Board, the personnel reductions and the limitations on travel our OMB budget examiner plans for our agency will, if carried out, mean the demise of the railroad retirement system and the railroad unemployment and sickness insurance system.

The two OMB civil servants who relate to us commenced years ago a process of starving us to death. So far they have cut our personnel 20 percent and have restricted our travel, again paid for by employers and employees, so that we cannot reach our beneficiaries, mostly elderly, many infirm, to provide them the service they must have.

These two civil servants profess the view that we need no field offices such as our field office at Fargo. They are trying to force us to abolish them.

It is, however, those offices that not only provide us direct contact with and service to our elderly annuitants and applicants, but also provide us most of our safeguards against fraud, abuse, waste, and error.

To close our field offices, Mr. Chairman, and do business with our public by telephone or mail from Chicago would be as impracticable as your closing your Bismarck and Fargo offices and doing all business with your constituents from your office in Washington.

The Board has before it a recommendation of its chief executive officer that the 143-person reduction proposed by OMB be made entirely in the field service. He said that it should be made there because it is obvious that OMB is going eventually to get the field service, destroy it. So he said you might as well go along with it.

He set up a special task force to determine what we would do if his recommendation were carried out. That task force has reported. The Board has not acted on the report or the recommendation, but the task force has suggested that in 1983 we do away with two-thirds of our field offices, leaving only one-third.

The cuts that OMB civil servants have already forced on us have already caused a distinct deterioration in our service to our clientele. A large proportion are elderly, disabled, and dependent on our system for their livelihood.

The cuts have also increased the incidence of fraud, waste, abuse, and error.

In short, the cuts already have resulted in poorer service to your constituents who are our clientele and increased costs to the funds we administer.

I hate to see the railroads' money frittered away so needlessly and to see their employees, active and retired, treated so badly, all against the will of the employees and the employers who are paying the bill.

President Reagan's Deputy Commissioner of Social Security for Programs resigned last month. He is Dr. Robert Myers. You perhaps know him by reputation. He has been outstanding in the field of social insurance. He said he was resigning the position of Deputy Commissioner for various reasons, but he did point out that policy is being made by civil servants at OMB and he feels that policy is destructive.

It is my understanding that the same civil servants at OMB who have jurisdiction of the Board also have jurisdiction of social security.

As a person who has spent his life in private enterprise, it has come as a shock to me to see how two civil service employees can have such a tremendous impact on the policies and operations of such a supposedly really independent agency as the Railroad Retirement Board and have the power of life or death over it.

As the management member of the Board, I suggest that the Congress first restore our 1977 personnel levels with salary and travel money to support them so that the board can provide your constituents and ours the service and efficiency they deserve and then appoint a distinguished panel of people headed by such a person of experience, impartiality, and probity as Dr. Myers to study the entire question of how the services and benefits of the railroad retirement system can best be delivered in the best interests of our public and with the least fraud, abuse, error, and waste.

Thank you, Mr. Chairman.

LABOR MEMBER'S STATEMENT

Senator BURDICK. How about the third member. Do you have something to say?

Mr. CHAMBERLAIN. Thank you, Mr. Chairman.

Mr. Oliver, the management member, has certainly outlined the situation as it exists and I certainly endorse his statements. The statement and justification submitted to this committee is the statement of the chairman and does not reflect the views or the position of the labor member, and I represent the interests of the employees who are covered by the Railroad Retirement Act.

The first time that I had an opportunity to review the statement was yesterday afternoon. A quick review revealed that labor could not support it, and because of the shortness of time that was available to us we were unable to prepare an appropriate response. We would certainly be very happy to furnish an additional statement for the Committee for the record at a later time.

Senator BURDICK. I will be glad to receive it. I presume it will be presented promptly.

Mr. CHAMBERLAIN. Yes, it will, Mr. Chairman.

[The statement follows:]

STATEMENT OF CHARLES J. CHAMBERLAIN

At the request of the presiding Chairman of the appropriation hearing held on February 11, 1982, I am submitting this statement setting forth the reasons why I am unable to subscribe to the statement submitted by Mr. Adams, the Chairman of the Railroad Retirement Board.

At the outset, I would like to reiterate my agreement with the testimony presented by Mr. Oliver, the Management Member of the Board, that the statement submitted by Mr. Adams simply does not represent the position of the Board. That statement, in its final form, was dictated by budget examiners within the Office of Management and Budget and contains statements which are, in my opinion intentionally, misleading and inaccurate with respect to the requested appropriations for the payment of so-called "windfall" dual benefits and for personnel compensation.

Consistent with the statement made by OMB officials in the President's budget that "Federal taxpayers directly subsidize railroad retirement," the OMB budget examiners insisted on referring to the requested dual benefit appropriation as a "Federal windfall subsidy." Apparently these OMB officials believe that if people can be convinced through the use of such a misleading characterization that the Federal government is subsidizing the railroad retirement system, support can be created for achieving their twin goals of eliminating or sharply reducing the appropriation and of dismantling the railroad retirement system in its entirety.

The fact is, however, that the Federal government does not subsidize the railroad retirement system under any reasonable, objective analysis of the nature of the so-called "windfall" dual benefit appropriation. The term "windfall" benefit--a term which has itself been greatly abused by OMB officials--refers to a benefit amount which accrued in the past to employees who split their working careers between railroad retirement and social security covered employment. Because of the dual coverage thus obtained and because of the weighted nature of the social security benefit formula, persons who received uncoordinated benefits under both systems were able to receive an amount which was not financed by employment taxes. For reference purposes, this unfinanced benefit has been referred to as a "windfall" amount. By the early 1970's it had become apparent that the railroad retirement system could no longer bear the ever increasing costs of these unfinanced benefits. Accordingly, the Railroad Retirement Act of 1974 was enacted to fully coordinate the benefits payable under the railroad retirement and social security systems, thereby eliminating any future accrual of such unfinanced benefits.

Although the future accrual of such benefit amounts had been eliminated, the question remained as to what disposition should be made of "windfall" amounts which were being paid or which had fully accrued before the law was changed. Since all parties agreed that the railroad retirement system neither could nor should continue to bear this cost, the real question was whether "windfall" amounts should immediately be eliminated entirely or be continued and financed by general revenue appropriations, in the same manner as certain payments made under the Social Security Act which are not financed by social security employment taxes. The Congress decided, over the strong objections of OMB officials, that as a matter of public policy the latter course of action was the only equitable course to follow.

As can be seen, the decision to provide "windfall" appropriations simply represents a determination that, for reasons of sound public policy, certain benefit amounts should be paid despite the fact that they were not supported by employment taxes. Thus, as in the case of payments made under the Social Security Act for certain military service credits or to certain uninsured persons, such payments are financed by general revenue appropriations. It is no more accurate to refer to these appropriations as a subsidy to the railroad retirement system than it would be to refer to the appropriations to support unfinanced benefits provided under the Social Security Act as a subsidy to the social security system.

With the enactment of the Railroad Retirement Act of 1974, the "windfall" element of dual benefits was eliminated from the benefit structure of the railroad retirement system. Nevertheless, the "windfall" benefit, although it was to be financed by general revenue appropriations, continued to be payable from funds in the Railroad Retirement Account, just as payments of unfinanced benefits provided under the Social Security Act are payable out of the social security trust funds. Having lost the fight to eliminate "windfall" payments entirely, OMB officials turned their attention to efforts to keep the appropriations as low as possible, even though the resulting appropriations were clearly insufficient to fund the full costs of the benefits provided. As a result, the railroad retirement system, contrary to the scheme of the 1974 changes in the law, continued to bear a significant portion of the "windfall" costs. Furthermore, those costs rose at unanticipated rates, due largely to the impact of the unprecedented inflation in recent years.

Recognizing the burdens created by such cost escalations, representatives of railroad labor and management gave their support in 1981 to legislation which reduced the levels of "windfall" benefits to employees who would retire in the future and eliminated them entirely for spouses and widows who had not already been awarded such benefits. In addition, in order to protect the railroad retirement system from costs otherwise resulting from inadequate appropriations, the law was amended to provide that the "windfall" benefits actually paid in a particular year could not exceed the financing appropriation provided for that year.

Despite these cost saving measures, OMB officials continued to urge even lower appropriations, and the OMB budget examiners have now altered the justification statement purportedly submitted by the Board in support of the 1983 appropriation request to make it appear that it is the Board's position that railroad labor and management assumed, in supporting the 1981 legislation, that the maximum "windfall" appropriation should never exceed $350 million a year. That, of course, is not the Board's view, and as a member of the Board I must strongly object to the efforts of OMB budget examiners to insert their unsupported opinion in statements purporting to express the views of the Board members. Furthermore, as the member of the Board who serves as the representative of railroad labor, I can state unequivocally that the OMB examiners' statement is erroneous. Although labor, along with management, acted responsibly to insure the continued soundness of the railroad retirement system by insulating it from costs which legislation enacted over six years ago contemplated should not be borne by the system, railroad labor representatives certainly intend to continue to urge that full appropriations be provided so that the benefits of those already on the roles need not be reduced. So far as I know, OMB is the only organization actively urging that inadequate appropriations be provided, and it concerns me greately when OMB officials attempt, as they have here, to shift the responsibility for such a position to someone else.

Turning to the area of personnel levels provided by the proposed budget limitations, I would at the outset like to express my full support for the statements made by Mr. Oliver at the February 11 hearing. The severe personnel reductions which the OMB budget examiners are attempting to impose in 1983 represent the first step in a professed plan to completely eliminate the Board's field service by 1985. Such a proposal goes far beyond any legitimate OMB function of pressing for efficiency and economy in the way an agency carries out its functions. It represents a management decision, made by those examiners, as to how the Railroad Retirement Act and the Railroad Unemployment Insurance Act should be administered. As such, this proposal constitutes a clear and blatant attempt to usurp the authority vested by statute in the Board, and in the Board alone. It makes a mockery of the statutory provision which states that the "Board shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ such individuals and provide for their compensation and expenses as may be necessary for the proper discharge of its functions."

Clearly, if any Board member were to advance a proposal, as a serious management suggestion, that the Board begin immediately the full elimination of its field operations, the mere advancement of such a proposal would be indicative of the managerial incompetence of that Board member. In support of such a proposal, the OMB examiners, purporting to speak as Board members in the statement submitted by Mr. Adams, state that "we will initiate cooperative, compensated arrangements with rail labor or management organizations to take retirement claims, much as we do now with 'unemployment claims agents'." Such a bold statement is made as a justification for an immediate, drastic reduction in field service personnel even though no steps have yet been taken to determine whether labor and management would be able and willing to undertake such a function, or even whether it would be legally permissible for the Board to contract out such governmental functions. Having apparently already assumed that they can dictate to the Board how it will carry out its functions, these budget examiners have the audacity to believe they can dictate to the railroads and to railroad labor what personnel and services they must provide to effectuate the examiners' scheme.

I could go on at much greater length discussing the merits of the OMB proposal, but to do so would be fruitless. In actuality, the OMB proposal to eliminate the Board's field service obviously does not represent the budget examiners' good faith beliefs that they are advancing a sound management proposal. Were that the case, OMB would be proposing the same concept for administering the Social Security Act. Instead, the proposal represents a concerted effort by the OMB examiners to destroy the Board's ability to effectively administer the retirement and unemployment and sickness insurance systems entrusted to it, thereby furthering their goal of completely dismantling those systems as they presently exist. That this is so is amply demonstrated by the statements of other Administration officials, including Mr. Adams at the February 11 hearing, that transferring railroad retirement beneficiaries to the social security system would provide them with better service because the Social Security Administration has so many more field offices available to them.

As a representative of active and retired employees, their families, and their survivors, I am both angered and saddened by these callous efforts of OMB budget examiners to destroy systems which have served us so well for over 40 years. The real tragedy is that those efforts may very well be successful unless Congress acts to eliminate the examiners' power to destroy through the arbitrary and unjustified reductions in personnel which they propose.

PERSONNEL CUTS

Senator **Burdick**. Well, I am going to ask some questions of Mr. Adams, and since you have got a divided board here, if either one of the other gentlemen wish to respond to them, they may. I want to be democratic here.

I suppose my first question is whether or not the Congress even has the authority to enact the kind of personnel cuts recommended by the administration. Isn't it true that under the Railroad Retirement Act and the Railroad Unemployment Insurance Act the Board is vested with the authority to determine the personnel and offices needed to properly discharge its functions?

Mr. **Adams**. That is true, Mr. Chairman. It is also true that the Railroad Retirement Board is an executive branch agency, albeit independent executive agency in the executive branch. As such it is subject to Presidential policy direction. As in the case of other agencies, the Office of Management and Budget does review budget requests and does impose personnel ceilings.

For example, when a President decides that there will be a 2- or a 10-percent across-the-board cut either in dollars or in personnel, as an executive branch agency we are subject to that.

SOURCES OF FUNDING

Senator **Burdick**. Isn't it true that less than $400 million, or 12 percent, of the Railroad Retirement Board's $6 million budget comes from the Federal Government?

Mr. **Adams**. I'm sorry, Mr. Chairman. The figures again?

Senator **Burdick**. $6 billion. Did I say million?

Isn't it true that less than $400 million, or 12 percent, of the Railroad Retirement Board's $6 billion budget comes from the Federal Government?

Mr. **Adams**. Yes, sir; I believe what you are referring to in that number, the less than $400 million, would be the windfall subsidy payment that comes from the general fund of the Treasury. Otherwise you are correct, the amounts for benefit payments and administrative expenses come from the Railroad Retirement Trust Fund which consists of employer and employee taxes.

Mr. **Oliver**. Mr. Chairman, can I speak to that also?

Senator **Burdick**. Yes.

Mr. **Oliver**. It seems to me that this so-called windfall or dual benefit is not properly part of our budget. That is a social security payment for social security covered work; it is not for railroad retirement covered work. This payment was imposed on the railroad industry many years ago by the Congress against the wishes of the employers and the employees. Both in 1974 and again last year the Congress recognized that it had made an error and sought to lift that burden from the railroad industry.

It is true the Railroad Retirement Board acts as a conduit for the payment of those moneys, but they are not railroad retirement moneys, so there is no subsidy by the Federal Government to the railroad retirement system.

Senator BURDICK. If that's the case, why should the Federal Government, whose primary function is to collect the taxes from railroad management and railroad employees and then distribute those taxes in the form of pensions be allowed to dictate the number of personnel employed by the Board, the number of its field offices, or the quality of services it provides?

Mr. ADAMS. Mr. Chairman, I think my answer to that can best be described by drawing the analogy to social security, which is also a trust fund consisting of employer and employee taxes, and the administration does decide how many offices will be available to distribute those benefits to employees. To the extent that we pay a benefit for which we receive the interchange from social security, our tier 1 benefit, generally speaking being equivalent to a social security benefit, is in effect a duplication of that service, and I see no difference.

Basically, the Railroad Retirement Trust Fund is employer/employee taxes from a single industry. It is, however, an account in the Treasury, and once it is deposited there it is then Federal money to the same extent that the Social Security Trust Fund is a Federal trust fund, even though it represents employee/employer taxes and is distributed by the Federal Government.

Mr. OLIVER. Mr. Chairman, that is, of course, the way the Office of Management and Budget looks at this. The railroad industry looks at it quite differently.

The quotation I was about to give from the president of the Association of American Railroads spoke of it as "our money." "We should have voice in the spending of our money for administrative purposes," and I would agree with that.

Mr. CHAMBERLAIN. Mr. Chairman, speaking on behalf of the railroad labor people, we certainly resent the intrusion in the administration of the Board. The law is clear that the Board will administer the affairs of the Railroad Retirement Board, and on a number of occasions Mr. Oliver and I have taken steps to insure that we have that service level maintained in the field operation.

I would like to furnish you sometime the protests that we receive when, in our periodic reviews of our system operation, decide that perhaps a base point, a one-person office, is no longer necessary. The protests that we get from rail labor in connection with just closing that point are numerous. Our Board is doing a good job in administering our system, but we are unable to do the job as provided for by the law because of somebody else telling us how many people we need. We are very responsive to the needs of our railroad people. We are in daily touch with them. Our offices are, on a daily basis, in touch with all of our field offices and the people that they serve. Since Mr. Oliver and I have been at the Board there has been nothing but a continued reduction in our personnel ceilings. We are almost to the point where the Board will be inoperative in the near future if it isn't stopped.

Mr. OLIVER. May I add to that, Mr. Chairman?

As I think I said, or meant to say, we have had a 20-percent reduction in the past 5 years. Now this reduction, which came before the present administration came in, was the result of the machinations of the two people at OMB who relate to us. They tell us to expect a reduction of an additional 200 positions in 1984 and an additional 130 positions in 1985. That will leave us, in 1985, with 1,070 positions, or a little bit more than half of the positions that we had 5 years ago.

FIELD SERVICES

Senator BURDICK. This is for Mr. Chamberlain.

Aside from the question of whether the proposed cuts are fair or even legitimate, I'm very concerned about their impact on the kind of services provided by field offices of the Railroad Retirement Board around the country. Mr. Chamberlain, would the field offices stay open, and if so, how much of what they do right now would be continued?

Now all of you touched upon that. What is going to be the real effect on the field offices?

Mr. CHAMBERLAIN. If the budget is adopted as it has been submitted by the Chairman, what would be the effect upon the field offices?

Senator BURDICK. Yes.

Mr. CHAMBERLAIN. We are going to have to close field offices, and railroad labor is going to be very upset with those responsible for such changes.

Senator BURDICK. When you say closed, you would close field offices, do you mean all of them, part of them, or how many of them?

Mr. CHAMBERLAIN. Well, that would have to be studied. We have a group that is reviewing our operation on a continuing basis. If we are forced to reduce our personnel, the only place we could cut is the field service. We're at a rockbottom point at headquarters, the national headquarters where we compute, calculate, keep all of the records, pay the checks. We can't cut that any more. If you cut the field service, the railroad community is going to be seriously affected and be very upset. Mr. Adams in his statement pointed out additional duties that the Board must now administer in connection with the Milwaukee Railroad, the Rock Island, the 701 provisions of the Northeast Rail Corridor Act of 1981. These are all additional functions that have been placed upon us in addition to the job of keeping the very complex railroad retirement system going. The 1981 amendments did a lot to simplify our operation in the future, but certainly any reduction in the present force will have very serious effects upon our current operations.

Senator BURDICK. Comments from you other gentlemen?

Mr. ADAMS. Yes, Mr. Chairman.

I would like to add at least one additional perspective to the reduction in the field service. Historically the railroad industry had 2 to 3 million people employed and a few hundred thousand retirees. Today, as of December, we had 477,000 people employed in the industry and approximately 1 million retirees.

I think, at least in my opinion, what the OMB proposed cuts in personnel are requiring the Board to do is to face the inevitable fact that we are dealing with a declining workload. In the future there will be fewer people to apply for benefits. If we have 477,000 employees right now, theoretically, and this does not rise dramatically, some time in the future we can't have more than that number of retirees on the rolls. In order to prepare for this we cannot go on as we have in the past and always be able to provide the direct face-to-face contact in an office, across a desk. What we will be required to do under this budget is restructure our field service to try to maintain the best possible level of service that we can.

Now that would undoubtedly require consolidating some field offices, coming up with new so-called self-administered applications so that an individual can receive an application for retirement in the mail, fill it out himself, turn it into an office; also make available 800 telephone numbers so that they can have direct access to an office without having to physically have an office there, and in that way try to meet what is eventually and inevitably a declining workload. With the limited funds that we have available in the fund itself, we cannot provide the expensive administration of the past. Expense must be brought in line with the workload eventually.

Mr. OLIVER. Mr. Chairman, you invited all three of us to speak to this, so I would like to add my comments.

Senator BURDICK. I certainly did.

Mr. OLIVER. First of all, the cost of administering railroad retirement is far less per unit, per dollar paid out, or what have you than the cost of administering social security. We have traditionally operated on a shoestring. That's one of the difficulties with the system: We do operate on a shoestring.

Now I would like to mention one of the important functions of our field service that we are performing quite poorly because of personnel cuts, and that's the placement of unemployed railroad workers. We have very high unemployment in the railroad industry at the present time. One of our primary jobs under the law is to place these unemployed workers in productive employment.

We have, because of the cuts, very little opportunity to do that. We have that same obligation under the Northeast Act, under the Milwaukee Road Act, under the Rock Island Act. We are doing the job very poorly simply because it takes field personnel to place these people.

We have at Gallup, N. Mex., a field office. We have four people there. We have 2,000 unemployed railroad workers in the Gallup area served by these people. We are paying out $1 million a month in unemployment benefits to these people. Now a field office that small, handling this amount of work in addition to its placement efforts, in addition to its retirement work, can do little more than shuffle the papers through, than to send the claims through, examine them personally, but not investigate them.

The result is we are paying out money that is wasted, that should not be paid for invalid claims. But more than that, we are failing to do the job we should be doing of helping to place these people.

If our district manager at Gallup had the opportunity to work with the railroads and get these people placed we would have a lot fewer people on the unemployment rolls.

Senator **Burdick**. You are telling me, then, that the work of these offices is more than just processing claims?

Mr. **Oliver**. Absolutely.

Senator **Burdick**. That you are actually seeking employment for those that need it?

Mr. **Oliver**. By law that's one of our functions. It is clearly stipulated in the law that we should do so.

Senator **Burdick**. Does anybody else have anything to offer on this one?

COMPARISON TO SOCIAL SECURITY

Mr. **Chamberlain**. Mr. Chairman, just one more point. Mr. Adams compared us with social security, and I would just like to address that for a second.

Our operation and our field offices and our headquarters is much different from social security in that in addition to not only computing the regular retirement annuities we have several other programs that we administer in accordance with the law. We administer the RUIA Act. That's the unemployment; the sickness program. No cost to anybody but the industry and the people that work for it. The supplemental pension program, the occupational disability program. And these are all functions that are covered by current law that we provide in our field offices and our national headquarters. So they are much different than just a straight social security operation where they administer social security benefits.

ADMINISTRATION PROPOSAL

Senator **Burdick**. Mr. Adams, these gentlemen referred to the other programs, such as the sickness program, and others. Do you think you could take care of all those by mail?

Mr. **Adams**. Mr. Chairman, at this point we have been discussing all of this in the context of current law. I don't want to anticipate any questions that the committee may have. However, I would call your attention to some references in the budget justification, to the President's proposal in this current budget. In my opinion it answers many of the questions that have been raised here today.

That proposal would in effect propose to abolish the Railroad Retirement Board. In its place tier 1, which as I said before was generally equivalent to a social security benefit for which we currently receive an interchange payment from social security, would be turned over directly to social security, which currently has over 1,300 offices throughout the United States to serve clients. We currently have 76 district offices under our proposed budget. That would probably be cut to 30-some offices.

The unemployment program would be turned over to the State unemployment system and would be operated in the same manner as unemployment benefits for every other industry.

The tier 2 portion, which is the staff private pension railroad benefit, would be turned over to labor and management to be operated by the private corporation that they could charter to be operated in the same manner as any multiemployer plan would be operated today under

ERISA. Although I do not intend to imply that—under that proposal the ERISA funding requirements would not be extended to existing benefits. If this proposal would be adopted, the ERISA funding requirements would be applied only to newly negotiated benefits.

This would relieve some of the objections that have been raised here this morning in this way. If labor and management had their own multiemployer plan they would be free from OMB interference, the whims of the executive or the legislative branch, because under current law, labor and management in the railroad industry must sit at the negotiating table and negotiate a collective bargaining agreement.

But that doesn't end it. They must then come to the Congress and have that collective-bargaining agreement enacted into law as an amendment to the Railroad Retirement Act and have the President sign it. If this proposal is adopted they would be free to collectively bargain, as they do now, and not wait upon the Congress or the executive branch to approve their actions. They could be implemented immediately.

This proposal would turn over to that proposed private corporation approximately $3.6 billion in assets to begin administering the tier 2 program.

That would be at least a brief summary of what that proposal is.

Senator BURDICK. One thing that comes to my mind although I'm not too familiar with how the Retirement Board works, I know about it generally. I know that when I had a social security problem I had to go to some office. It was very involved and very complicated sometimes. And I was trying to equate the railroad retirement field office with those of social security. I know a lot of these problems couldn't be handled by mail. Is there any comparison between the two?

Mr. ADAMS. Yes, sir; as a matter of fact, I believe that is one point on which all three Board members would agree, the railroad retirement program is more complicated than social security.

One of the benefits of this proposed legislation would be that you could have over 1,300 social security offices available to deal directly with the railroad beneficiaries who would then be directly covered by social security. The only industry in the country now not directly covered by social security would be directly covered, and their tier 2 benefits, which were simplified to some extent under the Omnibus Budget Reconciliation Act of 1981, would be administered as any other private employer fund.

REACTION TO ADMINISTRATION PROPOSAL

Mr. OLIVER. I think it would prolong the hearing unduly if I were to respond to what Mr. Adams has said about proposed legislation. I will say only that that is a harebrained scheme of a couple of mischief makers who have already caused great troubles at social security.

I should think that before the Congress seriously considers the proposal it would want to have a study by impartial, experienced, reliable people such as, for example, Dr. Myers.

Mr. CHAMBERLAIN. Mr. Chairman, I won't prolong this, but I have to make a comment with respect to Mr. Adams comments since he brought up the budget proposal. The budget proposal was first heard about by labor on Friday, February 5 of this year by a phone call from Mr. Adams, highlighting four or five points that it may contain.

I was in attendance at a Railway Labor Executives Association meeting this past week, up until Tuesday night. Rail labor received a copy of the budget proposal in this form on Monday and they reviewed it at their meeting on Tuesday. The reaction to such a proposal—I don't think I could adequately describe the views of my labor colleagues as they reviewed a proposal of this magnitude to be accomplished by September 30 of this year. The adverse impact that this proposal will have on the railroad community will be horrendous.

Mr. Adams said it's a simple thing. Take tier 1 and put it over in social security. I happened to read about social security's problems. And we are going to throw another million beneficiaries over to a system that administratively is just barely hanging together by bandaids today? That certainly doesn't sound like it's good business sense.

The other programs. Transfer the RUIA to the States. Now this is something that the railroad industry takes care of. We take care of it ourselves. We have a uniform RUIA and sickness plan thoughout the country. And now we are going to turn it over to 50 different programs? And you know very well, by action taken by the Congress this past week, as to what kind of problems they are having with respect to unemployment. Very serious ones.

We are not running to the Federal Government for any money. We are taking care of our own problems.

The sickness program. It just dangles in that proposal. What are you going to do with it?

All of these programs that we administer under current law are going to be dismantled and transferred to a private sector corporation.

The proposal also contains a provision exempt from ERISA. Now we all know why ERISA was enacted in the first place. Can you visualize, in the absence of anything being done in the collective-bargaining arena, 50 different pension programs? Or 100, if there's 100 railroads? Can you imagine the chaos in the economy when the railroad unions try to negotiate on a 1-to-1 basis with the railroads over a new pension system?

I can assure you that the word that I was directed by railroad labor to bring back and relate to this committee and any other committee I appear before was one of extreme opposition to what is contained in the budget proposal.

We have a good system. We are not wasting any money, Mr. Chairman. We're not spending foolishly. We are constantly reviewing our operation. But it's very difficult to administer a system when somebody is looking over your shoulder and telling you and making you do things that are not in the best interest of the people that we represent and the country as a whole.

Thank you.

QUESTIONS FOR THE RECORD

Senator BURDICK. I have some more questions here. We might save a lot of time and make it better for you too if I submit these questions to each one of the three of you and you can make written replies.

Mr. OLIVER. Very good, Mr. Chairman.

Mr. CHAMBERLAIN. Thank you, sir. We will be very happy to do so.

Senator BURDICK. I think we could get farther ahead by doing it that way.

Would a week be adequate time?

Mr. ADAMS. Yes, sir.

Senator BURDICK. I think for the balance of the questions we will submit them in writing and then you submit your answers. Thank you very much.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

Question 4: Would railroad retirees have access to the same kind of services that are provided to regular Social Security beneficiaries?

(Mr. Chamberlain) Answer: The Board's field service is responsible for first line contact in all matters relating to retirement and survivor benefits, unemployment and sickness insurance and employee protection plans. These functions extend far beyond those performed by social security district offices. Under the guise of advancing a sound management decision, OMB proposes that all the functions performed by our field offices in administering the many programs entrusted to us, can be handled by telephone, self-administered applications and certain contractual arrangements. Aside from the question of whether the Board could administer its functions in this manner, or even if it would be legally sound to contract out such functions, one must ask why OMB has not proposed the same concept for administering the social security law. OMB's proposal and personnel ceiling restrictions, aimed at eliminating the Board's field service by 1985, is in direct conflict with their statement that transferring Tier I to the social security system would be beneficial to our annuitants because the social security administration has so many field offices to provide personal service.

Our agency has shown that through properly staffed field offices and scheduled itinerant service, we can adequately service the railroad community and administer the functions of this agency in an economical manner. To dismantle an established, working operation, whose representatives are specially trained, and whose services are so vitally needed, solely at the personal whim of OMB bureaucrats, would be a tragedy not only for the 1.5 million people served through this system, but for our entire system of representative government.

(Mr. Oliver) Answer: No. I estimate that, if the 143-employee cut recommended by the two civil service employees at OMB is made in 1983, the Board would have to close half to two-thirds of its 99 field offices. If the cuts they plan for 1984 and 1985 are made, the Board would in all likelihood close all field offices and attempt to administer the acts entirely from headquarters.

The prepared statement submitted by Mr. Adams contains the following paragraph added at the direction of our budget examiner at OMB but not approved by the Board:

> "The Board will also begin restructuring its current field office network of 76 district offices. As part of this plan, we shall offer to rail beneficiaries and workers '800' number toll-free telephone service, operating for an extended workday. As part of our automation efforts, we intend to develop an ADP system which permits fast access to our records by headquarters personnel. This new capacity will permit greatly improved responsiveness to telephoned inquiries. In addition, we will initiate cooperative, compensated arrangements with rail labor or management organizations to take retirement claims, much as we do now with 'unemployment claims agents'."

What the OMB examiner proposes for the Board is totally impractical. Part of his plan depends on use of self-administered applications.

Very few people could complete their application forms without error: I'm sure I could not. It would take the average applicant hours to fill out the applications whereas it now takes 30 minutes or less. The proposal would place a burden on the older citizen that Board personnel now assume.

The Board has made no studies on the impact of use of an 800 number on staffing levels, but its preliminary inquiries show that 800 service is very costly. The Board has made no study of the hardware and software requirements to support such a system. It would be impossible to develop the computer and terminal capacity for such a system for FY 1983.

Neither labor nor management has been approached on doing the Board's field work. I am quite certain that neither would be willing to trust the other to adjudicate claims, hold hearings, conduct investigations, etc. In the nature of things, these activities must be carried out by an impartial third party.

The Board would be unable to carry out its statutory duty of placing in employment unemployed railroad workers. It would lose much of its capacity to detect and prevent fraud, abuse, error, and waste.

Even in 1983, with some of the field offices remaining open, the Board would be unable to provide most of its beneficiaries and applicants personal service, for OMB's proposed restrictions on travel expense would reduce even further "itinerant" service, i.e., service by traveling representatives of the Board to railroad employees and beneficiaries remote from a Board office. In short, service would plunge, and fraud, abuse, error, and waste would soar.

Question 5: Mr. Oliver, can't a strong argument be made that these personnel cuts would be counter-productive? Won't they just decrease the Board's ability to detect waste, fraud, abuse and error?

(Mr. Oliver) Answer: Yes, very definitely, to both questions. The Board, railroad labor, and railroad management have all made that argument both to OMB and to the Congress, but neither has listened. Railroad management pays most of the costs of retirement benefits and of administration of them and all the costs of unemployment and sickness insurance benefits and administration of them. It has a strong interest in providing for the Board sufficient funds for administration that the Board not only can provide good service but that it will be able to detect and prevent waste, fraud, abuse, and error in the billions of dollars it disburses. The chief spokesmen for rail management have testified to committees of the Congress and have argued to OMB--without avail--that the restrictions OMB has placed on the Board's ability to administer are decreasing the Board's ability to detect waste, fraud, abuse, and error.

Question 6: It seems that OMB's eventual goal is to totally dismantle the Railroad Retirement Board and redistribute its functions to the Social Security Administration and railway labor organizations. Does railroad management believe that present services to retirees could be maintained if that reorganization takes place?

(Mr. Oliver) Answer: I have not had the opportunity to discuss OMB's proposal with spokesmen for rail management since the proposal surfaced last Monday. However, I am quite certain in my own mind that railroad management would be of the view that present services to beneficiaries could not be maintained if the functions of the Railroad Retirement Board were turned over to the Social Security Administration and railway labor organizations.

Question 7: Mr. Adams, isn't it true that your agency has experienced almost a 20 percent cut in personnel over the last six years? Would you describe the impact of that cut on the level of service provided to railroad employees?

(Mr. Adams) Answer: It is true that we have experienced approximately a 20 percent cut in personnel over the last six years. The impact of that cut on the level of service provided has been greater on the retirement side than on the unemployment insurance side. Our unemployment services are provided under an almost completely automated system and, therefore, our cutback in personnel has had little, if any, impact on the time of payment of benefits. One possible effect of the cutback on our unemployment services, and I cannot document this, is that fewer employees have meant fewer available man-hours to monitor the eligibility of beneficiaries to receive benefits.

On the retirement side, however, it is a different story. We have had to cut back substantially on the frequency of our itinerant service to individual beneficiaries. We have also been required to enlarge the territories of some of our existing field offices, requiring them to serve larger areas and more beneficiaries. In addition, some of our offices have been reduced from district offices to base points, reducing the service available to beneficiaries from that particular point. Our retirement program is sorely in need of additional automation. Through the use of contractual services provided for in our budget we hope to use our existing resources to keep up with our current workload and use these contractual services to obtain the one-time services of outside contractors to assist us in improving our automation services.

The current budget proposal to turn the unemployment system over to the States would eliminate the need for the Federal Government to operate a nationwide monitoring program on unemployment insurance benefits and permit the States to monitor such benefits on a state-by-state basis. On the retirement side, the proposal to turn tier I over to Social Security would permit beneficiaries to receive individual services from over 1,300 district offices of Social Security located throughout the United States. It would also remove the Federal Government from involvement in the tier II benefits and permit the private corporation to deal with those benefits on a basis similar to that of any other multi-employer pension plans.

(Mr. Oliver) Answer: Yes, the two civil service employees at OMB have required, over the objections of the Board that administers the acts, an approximate 20 percent cut in Board personnel since 1977, not including the cuts now proposed.

The cuts have seriously hurt the quantity and quality of services the Board provides its mostly elderly, frequently infirm clientele. The Board's representatives cannot visit them as before, and it takes longer to answer their questions, provide them benefits or make required changes in benefits, correct errors, replace for them stolen or lost checks, etc. The Board is losing control over fraud and error. It is performing almost none of the placement activities the Railroad Unemployment Insurance Act charges the Board with providing.

I have visited most of our 99 field offices and have spent as much as two or three days at a time in a field office or with a field representative on itinerant service. With the cuts in personnel and with OMB's efforts --successful--to circumvent the intent of the Congress to pay the full amount of the Social Security dual benefit (sometimes misnamed "windfall")--, our field offices are so inundated with visitors, correspondence, and the like that they are providing poorer and poorer service.

For example, our Washington district office, into which, because of budget and personnel cuts, our Congressional liaison office was merged, receives daily from the White House or the Congress dozens of letters of inquiry or complaint from beneficiaries. Some types of inquiries or complaints, such as those about reductions in the social security dual benefit, can be answered with a form reply. Where other than a form reply is required, the district office must make an investigation. If, as is usually the case with the Congress, a response to the member is indicated, it must be prepared; if, as is frequently the case with the White House, the letter is referred to our Washington district office for a direct response to the writer, a direct response is made.

Presently that office has on hand 582 pieces of correspondence from Capitol Hill or the White House. It gives priority to correspondence indicating hardship; it responds to other correspondence as it can, with some responses delayed as much as two months.

In addition to the Capitol Hill and White House correspondence, the office performs to the extent it can the regular work of a district office--taking retirement applications, answering inquiries of workers or beneficiaries, interviewing unemployment claimants, investigating and adjudicating unemployment insurance claims, etc.; but it rarely has time to try to place unemployed rail workers.

Where formerly we had ten employees, we now have five. The OMB-imposed cuts continue, but the work has not diminished.

The office is bedlam. Telephoning it for the information just recited, I was put on hold for two and one-half minutes before I could get through.

This is simply a nearby example. Much the same situation obtains at our field offices throughout the country. We are not providing the service we should provide, and we are not doing what we should to detect and prevent fraud, abuse, error, and waste.

Question 8: What will be the reaction of current railroad employees if this proposed budget is approved by Congress? Is it not possible that we might have a strike on our hands if this goes through?

(Mr. Chamberlain) Answer: It is clear that the proposals made by OMB would be detrimental to the entire railroad community. I have been advised by the representatives of railway labor that the employees have no intention of idly standing by while the system, they have worked so hard to develop, maintain, preserve and finance for nearly half a century is destroyed. There can be no doubt that they will exercise their democratic right to resist such proposals with every resource at their command.

(Mr. Oliver) Answer: Should the reduction of 143 employees occur and we have to close a great many field offices as OMB is pushing us to do, the Board, the Congress, and the President will receive thousands of letters of complaint as was the case when OMB required us to reduce the Social Security dual benefit and as occurred with the Congress and the White House when the Congress, at OMB's urging, eliminated the Social Security minimum benefit.

I question, however, that the workers would strike over this, for they know that it is not the railroads but, rather, their elected representatives in the Congress and the White House who, by following the lead of OMB, are responsible for the decline in service.

POSSIBLE COMPROMISE TO PREVENT CUTBACK IN WINDFALL BENEFITS

Question 9: Suppose Congress were to place a cap on Federal windfall benefits at the President's request level of $350 million--but allow the Railroad Retirement Board the option of utilizing trust funds to pay the balance needed to prevent cutbacks in windfall benefits.

Is the railroad retirement trust fund solvent enough to make this a feasible idea?

Could each Board Member comment on the merits of this idea?

(Mr. Adams) Answer: The Railroad Retirement Trust Fund is not solvent enough to fully fund windfall benefits without substantially accelerating a financial crisis.

On the merits of the proposal, I would like to make several points. In my opinion, giving the Board the option of utilizing trust funds to pay windfall benefits in full would result in no change from the current situation. The reason is that, even though this is a Federal agency, it is composed of one representative from labor, one from management, and one public member and can act as an agency only when a majority of two of the members are in agreement. It seems obvious, therefore, that the representatives of labor and management would not take action which would accelerate a financial crisis for the fund. Railroad labor and management have repeatedly been invited by this and the previous Administration to address the question of windfall benefits in current negotiations by providing for a restructuring of benefits to live within a $350 million ceiling. Such a negotiated agreement would prevent any additional drain on the trust funds and, at the same time, limit the amount of dollars taken from the general fund of the Treasury to subsidize the windfall benefits. Finally, I have been advised by the Office of Management and Budget that any increase in the general revenue subsidy of railroad windfall benefits is not in accord with the policy of this Administration. However, if rail labor and management wish to raise windfall benefits to the pre-reconciliation levels, the Administration would not oppose authorizing legislation to transfer railroad retirement funds to the dual benefits payment account.

(Mr. Oliver) Answer: No. The fund is not solvent enough to make this feasible.

The dual benefit ("windfall") is a Social Security benefit for Social Security covered work. It is a benefit for work outside the railroad industry. Yet, for a great many years, it was paid out of railroad retirement taxes.

The Congress in the 1950's imposed the Social Security dual benefit on the railroad retirement fund over the objections of both railroad management and railroad labor. When it first did so, it had no idea of the magnitude of the burden it was placing on our fund. By 1974, however, Social Security dual benefit payments had cost the railroad retirement fund several billions of dollars and were destroying the health of the system.

In 1974, the Congress recognized the harm it had done the fund and moved to undo its mistake for the future. It authorized appropriation from the general funds of the government of monies required to phase out the dual benefit. But our budget examiner at OMB and his branch chief flouted the intent of the Congress and required the Board to request appropriation of less than the amount authorized by law. As a result, by September 30, 1981, the railroad retirement fund was almost $1 1/2 billion smaller than it would have been if windfall benefits had been fully funded on a pay-as-you-go basis. This contributed to a recurrence of the fund's problems.

Last year, the Congress again recognized the harm being done the railroad retirement system by its being forced to pay with railroad retirement taxes Social Security benefits for non-railroad work. It established a dual benefits fund separate from the railroad retirement fund and directed the Board to pay dual benefits only from that fund. However, OMB has not recommended the Congress appropriate enough to pay the full Social Security dual benefit, and under the terms of the law the Social Security dual benefit has been cut. There has been a tremendous outcry from those 400 thousand beneficiaries who believe they are entitled to a full benefit established by the Congress.

The Congress has twice--in 1974 and again in 1981--recognized its error-and sought to correct it--in saddling the railroad retirement system with the cost of the Social Security dual benefit. In my view, there is no warrant for authorizing the Board to recommit the error.

(Mr. Chamberlain) Answer: Initially, it should be noted that substantive amendments to the Railroad Retirement Act would be necessary before dual benefits could be paid from the Railroad Retirement Account. If such amendments were proposed, the Board would not favor their enactment. As you recall, prior to the railroad retirement amendments enacted by the Omnibus Budget Reconciliation Act of 1981, the railroad retirement system was in danger of running out of funds to pay benefits on a timely basis as early as 1982 or 1983. One of the major causes of the system's financial problems was the fact that each year the Railroad Retirement Account had to bear a significant portion of the cost of paying dual benefits because the appropriations to finance those benefits were insufficient. Indeed, by September 1981 the balance in the Railroad Retirement Account was approximately $1.4 billion less than it would have been if dual benefits had been fully funded on a current basis (or if the requirement to cut dual benefits back to the level of financing had always been in effect).

The solution to that problem, provided by the Reconciliation Act, was to pay dual benefits from a separate account containing the sums appropriated to finance those benefits, with benefits being reduced if appropriations were insufficient to fund full benefit payments. Such a solution was necessary in order to maintain the solvency of the Railroad Retirement Account, and the Account simply cannot afford to reassume the cost of unfinanced dual benefits. This is particularly true in view of the fact that recent declines in the level of railroad employment have raised the possibility that future corrective actions might be necessary despite the 1981 legislation. The Board would not favor being provided an "option" which it knows now it could not exercise without violating its fiduciary responsibility to maintain the solvency of the Railroad Retirement Account.

PRESIDENT'S REQUEST TO ABOLISH THE BOARD

The President's budget proposes new legislation to eliminate the Railroad Retirement Board, and let other government agencies handle payment of social security and unemployment benefits.

Question 10: Please explain the details of this request to essentially convert railroad retirement to a private pension system.

Could each of the three Board Members comment on the merits of this proposal?

(Mr. Adams) Answer: The Administration reorganization proposal would defederalize railroad retirement. This would restore the rail industry's pension to the private sector. It would end an inappropriate Federal involvement in labor-management relations in a single industry and free railroad labor and management from the need to petition Congress to enact legislation to conform the rail pension system to their collectively bargained labor contract. In the future, the rail sector pension plan would operate like other multi-employer private pension plans. Retirees' benefits and employees' rights would continue unchanged. The Railroad Retirement Board would be abolished. The Federal deficit would be reduced by $248 million starting in 1983 and result in a reduction in the deficit of almost $600 million by 1987. The proposal would also avoid future subsidies from the Federal Treasury for the private industry pension. Individuals would not receive lower private pension benefits. They would receive social security and Medicare benefits directly from the Social Security Administration and the Health Care Financing Administration. And, a few individuals now denied benefits under the railroad pension plan would receive payments from Social Security. Rail workers would also become eligible for higher unemployment benefits typically available under the State unemployment insurance systems. Railroad retirement assets, totalling $3.6 billion, would be transferred to the new private rail industry pension corporation. These reserves would help assure the financial integrity of the rail industry's pension plan and could be invested in non-Federal securities. The Federal windfall subsidy and the Milwaukee Railroad Restructuring Administration appropriations would be vested in other Federal agencies.

I believe the recitation of the details stated above already contain many comments on the merits of the proposal. To restate some comments on the merits in a more general fashion, however, it would restore the rail industry pension to the private sector and treat rail employees the same as all other private sector employees. It would also end Federal government involvement in the rail industry pension plan and remove constraints on rail labor and management. It would reduce Federal outlays for 1983 by $2 billion and result in a net reduction of $248 million in the Federal deficit in 1983. Finally, it would clarify the roles and responsibilities of the Federal Government, and of the railroad industry, with respect to both social insurance benefits and the private rail pension benefits.

(Mr. Oliver) Answer: My knowledge of this request comes from what is said at pp. 79 through 81 of the OMB document entitled Major Themes and Additional Budget Details.

As I understand what is there proposed, the Railroad Retirement Board would be dissolved on or before September 30, 1982, and its functions would go elsewhere.

Social Security would assume the function of paying that part of the railroad retirement benefit that is the equivalent of a Social Security benefit.

The Health Care Financing Administration would assume the Board's duties respecting Medicare.

There would be established (how is not made clear) a multi-employer private rail pension corporation that, at least at the outset, would pay those railroad retirement benefits that would not be paid by Social Security. The new corporation would not "have to contend with the 'changing viewpoints--and whims-of both the executive and legislative branches of government'."

The Treasury Department would convey to the new corporation $3,600,000,000, representing presumably the amount of employer/employee contributions estimated to be in the railroad retirement funds when the new corporation takes over.

Railroad workers now subject to the Railroad Unemployment Insurance Act would go into the state unemployment insurance systems.

The Proposal made in the "Major Themes" volume is that "Retirees' benefits and employees' rights would be unchanged due to the reorganization," but does not say what entity would assume such Board functions as paying the Social Security dual benefit, paying sickness benefits, or performing those functions required of the Board under the Northeast Rail Service Act, the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act.

Until the proposal is fleshed out, I can give only preliminary comment.

It seems to me the proposal has a superficial attractiveness but is deceptive.

It says that the proposed changes would "reduce the Federal deficit by over $0.2 billion starting in 1983, and result in a $0.6 billion deficit reduction by 1987," but it fails to point out that the proposed transfer of $3,600,000,000 in Federal funds to the proposed new corporation would increase the Federal deficit $3,600,000,000, for an over-all net increase in the deficit of some $3,000,000,000.

It fails to set forth the adverse effects on Social Security--both of (1) having to take on an additional load when it is struggling to keep abreast of what it has and (2) having to make payments to rail annuitants currently instead of postponing them for eighteen to twenty months under the financial interchange.

It fails also to provide for the very substantial cost of RIFing some fifteen hundred Board employees.

It takes no note of the consequences to the railroads--bankruptcies--of coming under ERISA funding requirements.

It does not note the hardship to applicants and to beneficiaries of having to deal with two entities rather than one on retirement matters.

It does not note that rail workers, who for more than forty years have had a common unemployment insurance benefit, would be splintered for unemployment insurance benefit purposes into 50 separate benefit schedules--something the Congress sought to avoid in enacting the Railroad Unemployment Insurance Act.

It proposes to accomplish in seven months the transformation of the most complex retirement system in the country--a job that, even if found desirable, could hardly be accomplished in as many years.

I am not opposed to privatization of the system if careful study shows that privatization is in the best interests of the railroad industry and its employees, active and retired. I would, however, oppose privatization without agreement of railroad management and railroad labor unless a thorough study by a commission composed of highly qualified, impartial, unbiased experts indicates clearly that it is the route to go.

The OMB authors of the proposal are not the highly qualified, impartial unbiased experts I have in mind.

(Mr. Chamberlain) Answer: Since neither the Railroad Retirement Board nor railroad labor or management were, to our knowledge, consulted with regard to the proposal in question, we are unable to explain the details of the proposal. We have as yet received no additional information other than that which has been passed on in telephone conversations. Furthermore, the budget statements regarding the proposal are mostly propaganda, much of it slanted or misleading, designed to make the reader believe that this scheme will be of great benefit to all concerned. Rather than respond to such rhetoric, we would prefer to await receipt of the detailed proposal and comment on its merits at that time.

CUTTING FIELD STAFF

We understand that even if legislation is not enacted to abolish the Board, the fiscal 1983 budget request would begin phasing out staff in the 76 field offices.

Question 11: How many staff would be eliminated, and how many offices closed, in fiscal 1983?

(Mr. Oliver) Answer: There are 99 field offices. If all 143 personnel cuts were made in the field as our examiner at OMB advocates and if the reductions were made as a task force study suggests, 66 of the 99 field offices would go in 1983.

Question 12: Would the proposal to set-up a toll-free phone number adequately replace services now provided by the field staff?

(Mr. Adams) Answer: Much of field personnel time is spent answering telephone inquiries. A toll-free number to headquarters would significantly cut field office workload.

Answering the many telephone inquiries are disruptive to field operations - UI contacts, retirement applications, etc. Relief from telephone disruption could substantially cut the time it now takes to complete required operations in the field.

Telephone inquiries will provide program areas in headquarters with a wealth of information about problem areas that could be solved or relieved by a general communication from Chicago. This headquarters response would relieve the field of the burden of responding to these problems.

Consistent responses would be communicated eliminating the need for clarification when the field gives one answer and headquarters another.

Hold files and follow-up files on questions pending information from headquarters could be reduced. Callers could talk directly with headquarters.

(Mr. Chamberlain) Answer: The answer provided by Mr. Adams to this question is very misleading when he suggested that "a toll-free number to headquarters would significantly cut field office workloads." Our field service is an essential and vital component of this agency. Some of the field's most significant functions are inherently governmental and cannot be contracted out or replaced by a toll-free number as OMB would have Congress believe. While a toll-free number may be utilized to improve service levels, it will in no way replace our field office staff. A toll-free number may allow our field office staff to turn their attention to important functions that have undergone a period of neglect due to the past personnel ceiling restrictions, such as benefit quality assurance activities and the job placement program for unemployment railroad workers. The Board has yet to determine the usefulness of a toll-free number. Several questions regarding the financing of such an operation and staffing requirements are still unanswered. However, if the Board does decide to implement such a system, it will do so as a means of providing better service to the people who pay for and are served by our system. It will not be implemented as part of OMB's overall scheme to entirely dismantle our field service by 1985.

(Mr. Oliver) Answer: No. Telephone conversations are no substitute for face-to-face discussion on matters so important to people as their retirement. This is particularly true of aged, frequently infirm, frequently uneducated persons. Presently, our field representatives get to know the applicants and beneficiaries as people and come to know their problems and concerns and can respond to them in a way that an operator at the end of a long distance telephone line cannot.

There are questions that, if not understood and not answered correctly, can cause forfeiture of benefits. There are instructions that, if not carried out, can cause forfeiture of benefits. A railroad industry employee well known to many people on Capitol Hill recently forfeited some $2,000 a year in benefits by failing to comply with instructions given him.

Ordinarily, talking with an applicant face-to-face, an experienced Board person can sense--frequently from facial expression--whether the applicant understands the question or understands the instruction. The applicant is more likely to understand and follow instruction given eyeball to eyeball than instruction given by phone.

A toll-free telephone could be of some use (although it might be hard to justify economically), but it can never adequately replace services now provided by field staff.

Question 13: "How much more would it cost, over the budget request, to keep staff at the fiscal 1982 level?"

(Mr. Oliver) Answer: The additional cost of keeping staff at the FY 1982 level would be $3.6 million. An additional $0.9 million (over what OMB proposes) should be provided for travel, primarily itinerant service in the field.

RATIONALE FOR CUTBACKS

Question 14: Since the Railroad Retirement Board is financed from taxes on rail employees, what would be the rationale for Congress imposing cutbacks, if the railroad industry objects to cutbacks?

(Mr. Adams) Answer: It is true that the Railroad Retirement Board receives its financing from taxes imposed on both rail employees and employers. Receipts from those taxes are deposited in the Federal Treasury in an account known as the Railroad Retirement Account, a Federal Trust Fund. Monthly benefits are paid to individuals from this account in accordance with the provisions of the entitlement program established under the Railroad Retirement Act of 1974. The Congress has the sole constitutional authority to make appropriations from the Treasury of the United States. Pursuant to this authority, the Congress has provided for annual appropriations from the general funds of the Treasury to the Railroad Retirement Account in amounts equal to the taxes referred to above to provide for the payment of benefits and to provide for expenses of the Board in the administration of such benefits. In annual appropriation Acts, the Congress provides for Board administrative expenses by imposing a limitation on the amount of funds the Board may utilize from the Railroad Retirement Account to pay its administrative expenses.

It may be argued that Congress is obligated to provide appropriations sufficient to pay benefits under the entitlement program. To argue, however, that Congress is obligated to appropriate annually the full amount of administrative expenses requested by the industry flies in the face of the constitutional power of the Congress to control the purse strings. Again, this is an example of the dilemma faced by the Congress because of Federal involvement in a private industry pension system. If the Congress enacts appropriations or other legislation based solely on industry requests, it faces the possible accusation of rubber stamping private agreements and abdicating constitutional responsibilities. If, however, the Congress does not follow industry agreements and chooses to modify or amend industry requests, it faces the possible accusation of undue intrusion into labor-management relations in a single industry. The current budget proposal would resolve that dilemma by assigning appropriate roles and responsibilities to the public sector and to the private sector.

Under the Budget proposal, the roles and responsibilities of the Federal government, and of the railroad industry, would be clarified with respect to social insurance benefits and with respect to private rail industry pension benefits. Under this proposal, the Federal government would clearly assume responsibilities for social insurance by direct payment through the Social Security Administration. At the same time, the rail industry would be permitted to remove their assets of $3.6 billion from the Federal Treasury and also be required to assume responsibility for payment of the private industry pension benefits. With respect to social insurance benefits, the rail industry would then be treated on the same basis as all other industries in the United States. The rail industry would also be permitted to use its assets for such administrative expenses as it deems necessary to provide adequate services to its beneficiaries without fiscal or other constraints imposed by either the legislative or executive branches of the Government.

(Mr. Chamberlain) Answer: Under Section 7(b)(9) of the Railroad Retirement Act and Section 12(1) of the Railroad Unemployment Insurance Act, the Board is vested with the authority to determine the personnel needed and the offices that should be maintained to properly discharge its function in administering the benefit programs entrusted to it. Mr. Adams contends that as an independent agency in the executive branch of the Government, such decisions made by the Board in an effort to carry out its explicit duties, are subject to OMB review and change. One would assume that any policy decisions by OMB would be reached only after consultation with the representatives of the people this agency serves. Clearly, this has not been the case. During the past several years, the Board has been burdened with a series of unreasonable and arbitrary personnel ceiling reductions, reflecting OMB's self-determined goal of dismantling the Board's field service. The expenses for administering the Railroad Retirement Act and Railroad Unemployment Insurance Act are paid entirely by the employees and employers of the railroad industry. The reductions made in the past have prevented the Board from providing services of the type and level that the railroad industry desires and is willing to pay for. The Board believes that the expressed desires of the railroad community for efficient, effective administration of the applicable laws should be the deciding factor, and that the Board, reflecting these desires, should so decide the level and quality of service provided and the measures necessary to maintain the integrity of the programs we administer. This position is consistent with our understanding of the Administration's policy that decisions as to the scope and costs of government programs should be made by those who pay for and are served by those programs, rather than by government bureaucrats.

The proposed cuts are based on OMB's position that our field service should be abolished. As a result of previously imposed ceiling levels, our agency has cut our headquarters operation (where the actual claims payment processing takes place) to bare minimum levels. Any future cuts will have to be made in our field operation. Pending the completion of a study now underway to develop an orderly plan for the allocation of our field resources in the event of the planned OMB cuts, we cannot say, at this time, exactly how many offices would close in FY 1983 as a result of OMB's directive. However, it is certain that consolidation of our offices would take place and that service levels would be cut significantly. Our field service is an essential and vital component of this agency. Some of its most significant functions are inherently governmental and cannot be contracted out or replaced by a toll-free number, as OMB would have Congress believe. Our field service staff adjudicates certain claims for benefits, monitors performance of unemployment claims agents, establishes facilities for taking claim, operates the program to find jobs for unemployed railroad workers, conducts hearings on overpayment determinations, and investigates issues on claims under all benefit programs administered by the Board. Through these and other functions, the field offices serve the entire railroad population both active and retired. It is the employees and employers of the railroad industry which pay for this service. Unfortunately, their desire and the Board's desire for an effective and efficient operation are totally ignored by OMB bureaucrats who are more interested in satisfying their own personal desires.

The imposition of unreasonable OMB determined personnel ceilings on the Board, is an unveiled attempt by certain bureaucrats in that office to sabotage an otherwise viable system. It is inconceivable that OMB would be allowed to act so irresponsibly and to make policy decisions which violate the clear intent of Congress and the basic principle of Government by the people and for the people. It is imperative that the voices of the 1.5 million people affected be respected in the formulation of policy and not merely regarded as resistance to be overcome in its execution. No sound argument exists for Congress imposing the cut-backs proposed by OMB. Such a proposal exceeds any legitimate OMB function of promoting efficiency in government operations, and is clearly not in the best interest of the Railroad community.

(Mr. Oliver) Answer: In my view, there is no persuasive rationale for the cutbacks--especially since those paying the bill and those served oppose them. The rationale offered by the two OMB employees is this: If you're going to be an agency of the Federal government, you're going to act like one and take cuts like everyone else (although OMB had been whittling away at us well before it was doing it to everyone else.)

Section 7(b)(1) of the Railroad Retirement Act says,

> "The Board shall have and exercise all the duties and powers necessary to administer this Act."

Section 7(b)(9) says,

> "The Board shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities, and employ

> such individuals and provide for their compensation and expenses as may be necessary for the proper discharge of its functions."

The Railroad Unemployment Insurance Act contains in Section 12(1) the same provisions and this:

> "The Board may employ such persons, and provide for their remuneration and expenses, as may be necessary for the proper administration of this Act."

Additionally, Section 11(a) provides,

> "The Secretary of the Treasury shall maintain in the unemployment trust fund ... an account to be known as the railroad unemployment insurance administration fund. This unemployment insurance administration fund shall consist of (i) such part of all contributions collected pursuant to Section 8 of this Act as equals 0.5 per centum of the total compensation on which such contributions are based; ... and (iv) such additional amounts as Congress may appropriate for expenses necessary or incidental to administering this Act. Such additional amounts are hereby authorized to be appropriated."

Section 11(c) reads,

> "Notwithstanding any other provision of law, all moneys at any time credited to the fund are hereby permanently appropriated for the Board to be continuously available to the Board without further appropriation for any expenses necessary or incidental to administering this Act, including personal services ...; travel expenses ...; and miscellaneous items."

I believe that the Congress does have the authority to enact the personnel cuts recommended by OMB, for the Congress has authority to amend the law. By the same token, the Congress has the authority to restore personnel OMB has required the Board to cut. However, in view of the foregoing statutory provisions and in view of the nature of the Board as established in RRA Section 7(a), I question that the Office of Management and Budget is empowered to override the Board's determination of the personnel and offices needed to properly discharge its functions although it has done so. Two of the three members of the Board are, by law, drawn from the industry the Board serves. The Board's administrative expenses, including those for personnel and offices, are paid from contributions made by employers (RUIA) or by employers and employees (RRA). It seems obvious from these facts and from the provisions quoted above that the Congress intended the Board to be a truly independent independent agency and did not intend it to be subject to the budgetary whims and caprices of employees at OMB.

None of the money for railroad retirement or railroad unemployment and sickness insurance benefits comes from the general funds of the Federal Treasury. The 400-some million dollars that comes from general funds is a Social Security benefit for which the Congress has elected to make the Railroad Retirement Board its payment agent.

IMPACT OF CUT IN WINDFALL BENEFITS

Question 15: How many railroad retirees were adversely affected by the 14 percent cutback in so-called "windfall" benefits voted on the fiscal 1982 continuing resolution? Give us some specific examples of how some individuals suffered particular hardships as the result of this cutback.

Answer: 390,000 beneficiaries were adversely affected at the beginning of fiscal 1982 by the cutback in windfall benefits. It is anticipated that an additional 10,000 beneficiaries (new employee awards) will be affected during the year. The breakdown by type of beneficiary is as follows:

Group	Total
Employees	190,000
Spouses	150,000
Survivors	60,000
Total	400,000

Question 16: Give us some specific examples of how some individuals suffered particular hardships as the result of the cutback.

Answer: The Board received thousands of letters and telephone calls regarding the cutback in windfall benefits. Many annuitants stated that the cutback would prevent them from meeting ordinary living expenses. Following are summaries of some specific cases:

- A widow said she did not receive enough to pay her rent, let alone to buy food and medicines. She talked about suicide because she did not know how she was going to exist.

- A man inquiring on behalf of his father said that his father would have to be moved from a nursing home to a state hospital because after the cutback he could no longer afford the nursing home. The state hospital is located in another city which is too distant for the son to make regular visits. The son was concerned about who would then look out for his father.

- One man said he had no place to live and asked if President Reagan would have him.

- A 78 year-old widow noted that the cost of living was going up while her check was going down.

- A man said his family would be in the street because he was not receiving enough to pay his bills.

- One man said he would no longer be able to help his 86 year-old sister who was in a nursing home.

- A man said he could not pay his bills and had to take his daughter out of school. He asked, "Have you ever had a little girl ask you why she couldn't have something to eat before going to school or why she couldn't have a pair of shoes without holes in them so her feet would stay dry?"

- A woman said she might as well shoot herself like an old dog that nobody wants anymore.

- A woman whose husband has Hodgkin's disease and is almost blind claimed the cutback was causing serious hardship.

Question 17: Can you provide for the record how many individuals currently receive "windfall" benefits, by state?

State	Number of windfall beneficiaries December 31, 1981
Total	383,000
Alabama	5,400
Alaska	100
Arizona	5,600
Arkansas	5,200
California	29,600
Colorado	5,200
Connecticut	2,700
Delaware	1,100
District of Columbia	1,100
Florida	21,700
Georgia	8,400
Hawaii	400
Idaho	2,500
Illinois	27,400
Indiana	10,500
Iowa	6,300
Kansas	8,300
Kentucky	7,600
Louisiana	4,500
Maine	2,000
Maryland	6,200
Massachusetts	5,800
Michigan	8,700
Minnesota	10,200
Mississippi	3,300
Missouri	13,700
Montana	3,100
Nebraska	5,300
Nevada	1,400
New Hampshire	1,100
New Jersey	9,600
New Mexico	2,300
New York	25,600
North Carolina	5,800
North Dakota	1,500

Ohio	18,700
Oklahoma	3,600
Oregon	5,800
Pennsylvania	27,700
Rhode Island	700
South Carolina	3,000
South Dakota	900
Tennessee	7,800
Texas	19,300
Utah	3,900
Vermont	1,000
Virginia	10,300
Washington	6,700
West Virginia	4,800
Wisconsin	7,200
Wyoming	1,700
Outside United States:	
Canada	200
Other foreign	600

IMPACT OF WINDFALL

For fiscal 1982, Congress has appropriated $379 million for "windfall" railroad retirement benefits. While this is $60 million less than the amount needed to prevent benefit reductions, it is $71 million more than the amount requested by the President.

Question 18: Are there certain beneficiary groups for which windfall payments have done a great deal to prevent or eliminate financial hardship and which would be more severely affected by across-the-board reductions?

Answer: The Board does not have information about the financial condition of its annuitants and therefore we do not know for which beneficiaries the windfall payments have prevented or eliminated financial hardship. We can only speculate that the beneficiary groups which are most often needy (e.g., widows) are the ones who would be more severely affected by across-the-board reductions.

Question 19: To what extent are windfall payments a relatively small component of higher-than-average railroad pensions?

Answer: Of those employees who receive higher than average pensions[1/], 60 percent do not receive any windfall benefits. Of those who receive a windfall benefit, the percentage that the windfall is of the total benefit received is as follows:

Interval (Monthly Annuity)	Windfall As Percent of Total Annuity
$600 - 649	18.6%
650 - 699	17.3
700 - 749	16.0
750 - 949	15.0
950 & over	13.9

1/ Average annuity for all employees was $575.

Employees with no windfall totaled 270,000.

Of those spouses who receive a higher than average benefit, who also receive a windfall benefit, the percentage that the windfall is of the total benefit received is 32 percent. There were 85,000 spouses or 37 percent of the total who received no windfall benefits.

Of those survivors who receive a higher than average benefit, who also receive a windfall benefit, the percentage that the windfall is of the total benefit received is 9 percent. There were 265,000 survivor beneficiaries or 82 percent of the total who received no windfall benefits.

Question 20: What other alternatives to reducing windfall benefits could be implemented, instead of across-the-board reductions?

Answer: Under current law there are no alternatives other than full funding of the windfall. Section 7(c) of the Railroad Retirement Act, as amended by P.L. 97-35, provides that windfall benefits be "distributed so that recipients are paid annuity amounts which bear the same ratio to the annuity amounts such recipients would have received...as the ratio of the total sums appropriated to pay such annuity amounts bear to the total sums necessary to pay such annuity amounts..."

It is clear, therefore, that the law would have to be amended to provide for an alternative procedure or to give the Board the authority to develop its own procedure. P.L. 97-35 eliminated the entitlement of spouses and survivors to windfall benefits unless they were already receiving such benefits on August 13, 1981, so there is little that can be done to reduce future awards of such benefits. Only newly-retired railroad employees who qualify will be awarded such benefits in the future; even in this case, the cost-of-living adjustment will extend only through 1981 rather than through the date of retirement.

If the law were amended, possible alternatives which could be considered are:

1. Provide that the basic windfall benefit be that which would have been calculated if the windfall had been awarded on January 1, 1975. Under current law, cost-of-living increases which occurred between 1975 and the earlier of the date of retirement or January 1, 1982, are applied. This change would apply to those on the rolls as well as to new awards. It would have no effect on those who retired prior to 1975, generally the oldest beneficiaries. If a further reduction were still necessary, it would be on an across-the-board basis.

2. Provide that windfall benefits not be awarded in the future to employees, as P.L. 97-35 provided for spouses and widows who were not receiving windfalls on August 13, 1981. Any further necessary reduction would be on an across-the-board basis.

3. Provide for a scale of reduction factors, so that those with the largest windfalls would receive the largest percentage reduction, and those with the smallest windfalls would receive the smallest (or no) percentage reduction. (This could be considered unfair since the windfall is only one component of a railroad retirement benefit. The magnitude of a windfall is not necessarily indicative of the magnitude of the total benefit).

Question 21: What would be the effect on dual beneficiaries' total benefits at various windfall appropriation levels?

Answer: It is estimated that if the windfall were fully funded in fiscal year 1983, the Board would pay approximately $430 million to about 352,500 beneficiaries. The effect of several appropriation levels is given in the table below for all categories of windfall beneficiary (employees, spouses and survivors) combined.

Appropriation (millions)	Average reduction in monthly benefit
$430	-
400	$ 7
350	19
300	31
250	43
200	54

Question 22: What alternatives exist to insure that those most needy would not suffer from any restrictions of future windfall benefits?

Answer: As explained in the response to a previous question, there are no alternatives under current law except for full funding of the windfall.

BENEFIT REDUCTION

Question 23:
How many railroad retirement beneficiaries were affected by benefit cuts that took effect during fiscal year 1982?

Answer: 400,000 beneficiaries will be affected during fiscal year 1982 by cuts in windfall benefits.

Question 24: What are the characteristics of persons whose railroad retirement benefits have been cut since passage of the Omnibus Budget Reconciliation Act? For instance, how many are retired workers and how many are survivors?

Answer: The breakdown of beneficiaries receiving windfall benefits is as follows:

	Number	Percent of Total
Employee	177,255	46.3
Spouse	147,242	38.4
Survivor	58,528	15.3
Total	383,025	100.0

Among employee beneficiaries receiving windfall benefits, 55% arise from "immediate" retirements, and 45% arise from "deferred" retirements. Immediate retirements average 27 years of service, and deferred retirements average 18 years of service. Immediate retirements are people whose year last worked is the year of retirement or the year preceding the year of retirement, and deferred retirements are all other retirements. Hence immediate retirements closely reflect the career railroad workers.

Question 25:
What were the average and the largest monthly benefit reductions?

Answer: The average reduction in the monthly benefit is slightly over $14. The largest reduction in the monthly benefit is about $72.

Question 26: What would be the average benefit reduction from fiscal year 1981 levels under your plan for fiscal year 1983?

Answer: The average reduction in monthly benefits would be about $19.

Question 27: What appropriation would be necessary to restore full benefits for dual benefit recipients beginning October 1982?

Answer: $430 million

TAKING PORTION OF BENEFITS OFF-BUDGET

The President's budget reflects a reduction of $2 billion in the private-pension component of railroad retirement benefits.

Question 28: Isn't this really just a paper transfer, taking this item out of the Federal Budget, but not actually reducing railroad retirement benefits?

(Mr. Adams) Answer: It is not just a paper transfer because we are actually removing that outlay from the Federal budget. It is true that railroad retirement benefits are not reduced, however, the responsibility for paying those benefits has been transferred from the Federal Government to the private railroad industry.

(Mr. Oliver) Answer: Yes, this is really just a paper transfer.

Question 29: What is the rationale for this change?

(Mr. Adams) Answer: The rationale for this change is to clarify the roles and responsibilities of the Federal Government with respect to social insurance benefits and of the railroad industry with respect to private industry pension benefits.

(Mr. Oliver) Answer: The rationale is that given at pp. 79 to 81 of the document entitled Major Themes and Additional Budget Detail. Our OMB budget people see the railroad retirement system as an "inappropriate federal function" despite the views of railroad labor and railroad management and all administrations and Congresses since the mid-thirties. (Inasmuch as railroad retirement was the precursor of Social Security, it may be they see Social Security also as an "inappropriate federal function.") They say also it would free railroad management and labor of the need to petition Congress when they mutually desire change, although they do not say railroad management and labor want or need this freedom.

They opine that the fund could draw greater returns if not federally invested, that Social Security (they say) and a private plan could provide beneficiaries better service (an opinion I do not share); and that "collectively bargained private pensions would no longer have to contend with the 'changing viewpoints-and whims--of both the executive and legislative branches of government"-correct to the extent that the OMB employees would no longer be setting railroad retirement policy contrary to the will of the Congress and the will of railroad management and railroad labor.

Question 30: Will it make the Federal deficit appear bigger or smaller?

(Mr. Adams) Answer: The Federal deficit will be smaller by $248 million in 1983 rising to almost $600 million in 1987. The reason for the reduction in the Federal deficit is that government receipts will be reduced in fiscal 1983 by approximately $1,744 million but Government outlays would also be reduced by $1,992 million. Thus, the net deficit reduction for 1983 is $248 million.

(Mr. Oliver) Answer: It will make the Federal deficit appear smaller (1) if the recession-caused decline in railroad employment continues and Tier II outgo exceeds receipts and (2) if labor, management, and the Congress do not make changes in taxes and benefits to rectify the imbalance and (3) if one disregards the high costs of RIFing hundreds of Board employees and (4) if one ignores (as OMB does) an estimated $3,600,000,000 increase in the Federal deficit that will result from OMB's proposal to transfer $3.6 billion from the Federal Treasury to a hypothetical private corporation.

Even if (1) and (2) should not occur and (3) is disregarded, one can hardly ignore the $3.6 billion increase in the Federal deficit that would result from taking that amount from the Federal Treasury and turning it over to the private corporation. OMB says (p. 81 of Major Themes and Additional Budget Detail) its proposal would "reduce the Federal deficit by over $0.2 billion starting in 1983, and result in a $0.6 billion deficit reduction by 1987"--small recompense for a proposed $3.6 billion increase in that deficit.

DUAL BENEFITS

In fiscal year 1982, the President proposed a 33% reduction in dual benefits paid to certain railroad retirees who have worked under both the railroad retirement system and social security. While the Congress did not endorse this cut, it did vote to reduce these benefits by approximately 14%.

Question 31: What appropriation would be necessary to restore full benefits for these dual benefits recipients in fiscal 1983?

Answer: $430,000,000

ADMINISTRATIVE COSTS

Question 32: What percent of railroad retirement benefits are spent on administrative costs compared with social security benefits and administrative costs?

(Mr. Oliver) Answer: 0.77% versus 1.3%

Question 33: "What is the explanation for the difference?"

(Mr. Oliver) Answer: Traditionally, the Railroad Retirement Board has pinched pennies--too much so in my opinion. It is my impression that in former years the Board was so wrapped up in controlling administrative costs that it relaxed control of benefit costs with the result it paid benefits that should not have been paid. Beginning in 1977, our budget examiner at OMB and his superior-the branch chief for income maintenance--took it as their mission to see that the Board had fewer employees than it needed and less money for administration, especially salary and travel, than was required, whereas Social Security, under the wing of a cabinet officer, was sufficiently strong to resist such cuts.

If the Railroad Retirement Board had the personnel and dollars it needs to do the job it is charged with doing, its administrative costs would more nearly approach those of Social Security, but there would be offsetting savings through a reduction in fraud, abuse, error, and waste, and there would be a vast improvement in our service to the aged and infirm populace we serve.

STAFFING CUTS

Question 34: To what extent would the recommended staffing cuts actually increase costs, but resulting in higher benefit payments due to errors?

Answer: The recommended staffing cuts in the field service would increase costs by increasing overpayments as a result of: .

- Inadequate development of claims - evidence of age, last person service, eligibility, etc.

- Reduction in the quality of monitoring activities - policing students and representative payees.

- Reduction in investigations - last person service, fraud, overpayments, excess earnings, continuing disability, etc.

- Reduced presence in some parts of the country with a corresponding reduction in the detection and deterrence of fraud, waste, and abuse. (Detection comes from interaction with the beneficiary, other federal agencies, state and local government agencies, local private companies, and other local organizations. Deterrence comes in the form of pre-retirement and post-retirement counseling.)

Information from recent years indicates that overpayments have increased for the above reasons as the number of field employees has been reduced. The Field Review portion of the Benefit Accuracy Study showed that 96% of the errors detected were caused by the beneficiary, and that such errors are on the rise. The bureau of retirement claims' record of accounts receivable substantiates both the trend in increased beneficiary error and the fact that most overpayments are caused by events that the beneficiary has responsibility for reporting.

Staff cuts totaling approximately 10% of current work force for FY 1983 would have a severe negative impact on headquarters' mechanical and manual benefit payment systems. Amendments to laws we administer require extensive changes in many interrelated systems. Fewer experienced analysts and programmers coupled with higher individual workloads would result in higher potential for error, less test-checking and more risktaking to implement these changes timely. New systems development would fall prey to similar personnel constraints. The beneficiary would not be able to detect other than the most extreme payment error because both railroad retirement and social security eligibility criteria and benefit calculations are complex and very difficult to explain in nontechnical terms.

Previous staff cuts have been made in the claims payment support system, which has reduced the numbers of people qualified to analyze the legislation, design forms, write procedure, and train claims adjudicators and field office personnel. Training and implementation are accomplished more slowly than before, which, in turn, allows undetected incorrect payments to continue longer.

The recently conducted Benefit Accuracy Study determined that in December 1979, the absolute dollar amount of payment error constituted \$3.3 million, which was .9% of the total dollars paid out that month. Expanded quality assurance and program integrity systems would be vying for the same limited staffing needed to make the initial and post-adjudicative functions more accurate and timely. Neither function could operate effectively with a skeleton staff.

Question 35: What level of staff cuts could you live with, in view of the fact that rail employment is declining, reducing your workload?

(Mr. Oliver) Answer: If we are to carry out efficiently the functions the law requires of us, we cannot tolerate any staffing cuts; on the contrary we need at least the 1,870 employees we told OMB last fall that we need.

Although railroad employment has been rapidly declining, there has not been a decline in our total workload. The number of beneficiaries on the rolls and the number of retirements have declined much less precipitously than has railroad employment. Our unemployment insurance load is double what it was two years ago. And the Congress has given us new duties under the Northeast Rail Service Act, the Milwaukee Railroad Restructuring Act, and the Rock Island Railroad Transition and Employee Assistance Act, for which OMB has not permitted us additional employees.

would vote in accordance with the views of the constituencies they represent and refuse to utilize trust fund money to make up shortfalls in windfall benefits.

I would call to the attention of the Committee two additional facets of the windfall appropriation process. First, the Board was unable to make regular windfall benefit payments on December 1, 1981, because of the expiration of the first continuing resolution. Upon enactment, immediately thereafter, of the second continuing resolution, the Board required to make retroactive adjustments in windfall benefits beginning with monthly benefits due on October 1, 1981, the beginning of the current fiscal year. The retroactive adjustment was necessary in order to compensate for the increased funding level contained in the second continuing resolution and required substantial manual operations by Board personnel resulting in a delay in receipt of windfall benefits by some beneficiaries until the month of February 1982. Upon the expiration of the current continuing resolution, any increase in funding levels would again require the Board to make retroactive adjustments to October 1, 1981, and again result in substantial delays in receipt of benefits for windfall beneficiaries because of the substantial manual operations required.

I am advised by the Office of Management and Budget that any subsidy to increase the general revenue subsidy of railroad windfall benefits is not in accord with the policy of this Administration. However, if rail labor and management wish to raise windfall benefits to the pre-reconciliation levels, the Administration would not oppose authorizing legislation to transfer railroad retirement funds to the dual benefits payment account.

(Mr. Oliver) Answer: Before I respond to the question, let me give a bit of background on the Social Security dual benefit, loosely termed the "windfall" benefit. Some of this background material was in the statement originally drafted for the Board, but our examiner at OMB ordered it deleted.

The dual benefit is a Social Security benefit for Social Security covered work. It is a benefit for work outside the railroad industry. Yet, for a great many years, it was paid out of railroad retirement taxes.

The Congress in the 1950's imposed the Social Security dual benefits on the railroad retirement fund over the objections of both railroads management and railroad labor. When it first did so, it had no idea of the magnitude of the burden it was placing on our fund. By 1974, however, Social Security dual benefit payments had cost the railroad retirement fund several billions of dollars and were destroying the health of the system.

In 1974, the Congress recognized the harm it had done the fund and moved to undo its mistake for the future. It authorized appropriation from the general funds of the government of monies required to phase out the dual benefit.

But our budget examiner at OMB and his branch chief flouted the intent of the Congress and required the Board to request appropriation

In my view, to provide our 1,500,000 railroad workers and beneficiaries the service they should have and to do a good job of guarding the billions of dollars in our charge against fraud, abuse, error, and waste, we need to restore our 1977 staffing level--1,900-- and, for travel, the equivalent in today's dollars of our 1977 travel budget.

This would mean increasing our personnel authorization by 324 people, instead of cutting 143--for a total of 467 more people than OMB proposes and $1 million more in travel funds than OMB proposes--principally for "itinerant" service out of field offices. The cost, as compared with OMB's proposal, would be $11.6 million more in salary and benefits and $1 million more for travel, or $12.6 million--0.21 per cent of benefits paid. This fraction of a per cent of benefits would mean the difference between doing a poor job and doing a good job of safeguarding our $6,000,000,000 pay-out against fraud, error, waste, and abuse and between doing a poor job and doing a good job of serving our 1,500,000 customers.

We would still have an administrative cost-to-benefit ratio in railroad retirement less than 1 per cent and still well below Social Security's.

USING TRUST FUNDS TO PREVENT CUTBACKS IN WINDFALL BENEFITS

As you know, the Reconciliation Act of 1981 made windfall benefits subject to the appropriations process, and thus vulnerable to budget cutting. Previously, shortfalls in Federal appropriations were paid from the railroad trust funds.

Question 36: What would you think of Congress giving the Railroad Board the option of using trust funds to prevent cutbacks in 'windfall' benefits, in the event Federal appropriations are insufficient?

(Mr. Adams) Answer: In my opinion, giving the Board the option of using trust funds to prevent cutbacks in "windfall" benefits would not prevent such cutbacks. The reason is that the railroad industry, both labor and management, have previously argued that the funding of windfall benefits is the sole responsibility of Congress to live up to the commitment made in the Railroad Retirement Act of 1974 which the legislative committees authorized appropriations from general funds of the Treasury of such sums as may be determined to be necessary to fully fund the cost of phasing out windfall benefits. The initial estimate of $250 million annually to phase out windfall benefits doubled to almost $500 million annually in less than five years. To the extent a lesser amount is appropriated, it is argued by the rail industry that the Congress is reneging on the commitment made in 1974.

Both this and the previous Administration have invited railroad labor and management to either restructure the windfall benefits to live within a ceiling of $350 million or, in the alternative, provide the necessary funding to pay the difference between the $350 million ceiling and the full cost of windfall benefits. In view of the previous position taken by both railroad labor and management, and the fact that a Board decision can be made only by a majority vote of at least two out of the three Board Members, I would have to assume that the Board Members representing labor and management of less than the amount authorized by law. As a result, by September 30, 1981, the railroad retirement fund was almost $1-1/2 billion smaller than it would have been if windfall benefits had since 1974 been funded on a pay-as-you-go basis. This contributed to a recurrence of the fund's problems.

Last year, the Congress again recognized the harm being done the railroad retirement system by its being forced to pay with railroad retirement taxes Social Security benefits for non-railroad work. It established a dual benefits fund separate from the railroad retirement fund and directed the Board to pay dual benefits only from that fund. However, OMB has not recommended the Congress appropriate enough to pay the full Social Security dual benefit, and under the terms of the law the Social Security dual benefit has been cut. There has been a tremendous outcry from those 400 thousand beneficiaries who believe they are entitled to the full benefit established by the Congress.

The Congress has twice--in 1974 and again in 1981--recognized its error--and sought to correct it--in saddling the railroad retirement system with the cost of the Social Security dual benefit. To give the Board the option of using trust funds to pay that portion of Social Security dual benefits for which the Congress makes no appropriation would be either to reiterate its earlier error or to shift to the Board the blame for the Congress' failure to carry out what was thought to be a binding commitment.

BOARD'S REQUEST TO OMB

Question 37: What did you request of OMB for windfall benefits and administrative costs of the Railroad Retirement Board?

Answer: $430 million and $75.9 million, respectively.

Question 38: If the Committee were to recommend simply maintaining current staffing levels for the Board, how much would be needed in fiscal 1983?

Answer: $62.2 million.

Question 39: How much is in the budget for travel, compared to your request to OMB?

Answer: $660,000, compared to $1,557,000 requested.

Question 40: What will be the proposed cuts in your travel budget?

Answer: The proposed travel funds by OMB for FY 1983 for the Railroad Retirement Board amounts to a reduction of 58 percent from the total travel funds requested.

The identified level of funding would provide only 58 percent of the actual travel performed in FY 1976 based on the OMB mid-session review assumptions. This is not only unfeasible but unrealistic in today's economical condition.

The $1,557,000 identified as required for FY 1983 not only maintained the same level of service which the RRB provides to its constituents but provided necessary funds for relocating RRB employees due to realignment of the field offices as a result of reduction-in-force. In addition, funds were identified for travel in connection with critical training requirements. The training will be essential to employees for adapting to new methods, computerized operations, and technology in connection with automation of various manual operations due to continuous personnel cuts.

To live within the proposed $660,000 limitation, the RRB will have to curtail attendance and participation at all meetings; severely restrict travel in connection with training, to only the very crucial; and, impose a deferrment of audit and inspection of field offices. Past history has identified that 72-75 percent of the RRB travel is field service, if past history trends continue, approximately $485,000 of the OMB identified FY 1983 travel funds would be expended for field service. This amounts to a 3% reduction from the current FY 1982 allocation without any consideration for inflation and increased travel due to realignment of field offices.

The end result of imposition of the identified travel limitation would be a reduced level of service to the annuitants and beneficiaries the RRB serves, a demoralization of the RRB employees and increase the possibilities of possible waste, fraud, and error.

FIELD OFFICES

Question 41: Provide for the record a state-by-state list of existing field offices, including both current staffing levels and the number of active railroad workers and beneficiaries served by each office.

State	Field office	levels	Current staffing workers	Active railroad Beneficiaries
Alabama	Birmingham district office	6	5,500	11,398
	Mobile district office	2	2,700	5,841
Alaska	None	--	- Not applicable -	
Arizona	Tucson district office	4	2,100	11,368
	Little Rock district office	5	7,400	13,238
California	San Francisco regional office	5	--	--
	Los Angeles district office	10	9,000	23,329
	Oakland district office	6	11,800	22,704
	Fresno base point	1	--	--
	Sacramento district office	7	6,500	15,620
	San Bernardino district office	6	8,200	14,801

State	Field Office	Current Staffing Levels	Active Railroad Workers	Beneficiaries
Colorado	Denver district office	7	10,600	16,508
Connecticut	New Haven district office	3	3,800	9,722
Delaware	None	--	- Not applicable -	
District of Columbia	Washington district office	6	3,500	7,328
Florida	Jacksonville district office	6	7,700	13,767
	Fort Lauderdale district office	3	1,600	9,161
	Tampa district office	7	3,600	26,433
Georgia	Atlanta regional office	4	--	--
	Atlanta district office	6	9,200	14,842
	Savannah district office	3	2,700	6,243
Hawaii	None	--	- Not applicable -	
Idaho	Pocatello district office	2	3,300	5,497
	Boise base point	1	--	--
Illinois	Chicago district office	15	20,300	31,770
	Des Plaines base point	--	--	--
	Decatur district office	6	9,900	17,103
	Rock Island base point	1	--	--
	Granite City district office	7	6,800	12,292
	Joliet district office	5	11,500	13,730
Indiana	Indianapolis district office	9	12,000	19,660
	Fort Wayne base point	1	--	--
Iowa	Des Moines district office	7	7,900	12,193
Kansas	Topeka base point	1	--	--
	Wichita district office	3	5,000	8,229
Kentucky	Louisville district office	5	10,200	15,422
Louisiana	New Orleans district office	4	5,400	8,548
	Shreveport district office	4	5,100	8,831

State	Field office	Current staffing levels	railroad workers	Beneficiaries
	Portland base point	2	--	--
Maryland	Baltimore district office	7	8,300	13,367
Massachusetts	Boston district office	6	8,500	18,498
	Springfield base point	2	--	--
Michigan	Detroit district office	10	12,000	12,111
	Escanaba base point	1	--	--
	Grand Rapids district office	4	3,700	6,412
Minnesota	Duluth district office	6	4,900	10,258
	St. Paul district office	8	15,500	19,808
Mississippi	Jackson district office	4	3,100	6,311
Missouri	Kansas City regional office	5	--	--
	Kansas City district office	8	15,000	20,094
	St. Louis district office	6	6,700	14,863
	Sedalia district office	2	2,200	4,973
	Springfield district office	3	4,700	8,673
Montana	Billings district office	4	5,300	7,114
Nebraska	Omaha district office	8	19,500	18,222
	North Platte base point	1	--	--
Nevada	None	--	- Not applicable -	
New Hampshire	None	--	- Not applicable -	
New Jersey	Newark district office	8	6,800	18,452
New Mexico	Albuquerque district office	3	4,100	11,140
	Gallup district office	3	1,700	1,464
New York	New York regional office	4	--	--
	Albany district office	5	4,300	11,297
	Buffalo district office	7	5,100	15,154
	Hicksville district office	3	7,000	10,284
	New York district office	9	9,200	15,492

State	Field office	Current staffing levels	Active railroad workers	Beneficiaries
	White Plains base point	1	--	--
New York (cont.)	Syracuse district office	4	2,100	7,044
North Carolina	Charlotte district office	6	6,600	11,964
	Raleigh district office	3	3,000	7,289
North Dakota	Fargo district office	4	5,300	7,405
Ohio	Cleveland regional office	5	--	--
	Cleveland district office	12	11,800	21,181
	Cincinnati district office	6	6,900	12,524
	Columbus district office	5	5,100	9,231
	Toledo district office	5	6,000	8,150
	Youngstown district office	4	4,100	6,983
Oklahoma	Oklahoma City district office	4	4,400	9,277
	Tulsa base point	1	--	--
Oregon	Portland district office	8	7,800	13,782
	Klamath Falls base point	-	--	--
Pennsylvania	Altoona district office	8	9,700	20,657
	Harrisburg district office	6	6,400	13,474
	Philadelphia district office	12	18,600	22,466
	Pittsburgh district office	10	12,100	21,104
	Scranton district office	8	3,200	13,626
Rhode Island	None	--	- Not applicable -	
South Carolina	None	--	- Not applicable -	
South Dakota	None	--	- Not applicable -	
Tennessee	Knoxville district office	5	4,500	9,054
	Memphis district office	5	5,400	9,046
	Nashville district office	5	4,700	9,821

State	Field office	Current staffing levels	Active railroad workers	Beneficiaries
Texas	Amarillo district office	2	2,800	3,240
	El Paso base point	2	—	—
	Fort Worth district office	7	11,900	19,945
	Dallas base point	1	—	—
	Houston district office	7	12,800	22,439
	San Antonio base point	2	—	—
Utah	Salt Lake City district office	4	6,300	10,722
Vermont	None	—	- Not applicable -	
Virginia	Norfolk district office	3	2,500	5,113
	Richmond district office	5	3,500	8,082
	Roanoke district office	6	6,400	11,721
Washington	Seattle district office	6	6,400	10,271
	Spokane district office	6	6,700	8,949
West Virginia	Huntington district office	11	14,200	20,697
Wisconsin	Milwaukee district office	8	7,200	17,118
	Eau Claire base point	1	—	—
Wyoming	None	—	- Not applicable -	
	Totals	495	549,700	991,940

Question 42: How are services provided in those states that don't have a field office?

Answer: As we show in the state-by-state list of existing offices, the Board does not have field offices in ten states. These states are: Alaska, Delaware, Hawaii, Nevada, New Hampshire, Rhode Island, South Carolina, South Dakota, Vermont, and Wyoming. Beneficiaries in eight of the ten states Delaware, Nevada, New Hampshire, Rhode Island, South Carolina, South Dakota, Vermont, and Wyoming, are served by means of advertised itinerant visits from Board representatives located at nearby district offices in adjacent states. Several district offices take in areas that include portions of two or more states. Beneficiaries in the two remaining states of Alaska, Hawaii, are provided personalized service whenever the workload demands that representatives be sent into their area. Records indicate our representatives traveled to Alaska and Hawaii approximately once each year for a period of one week.

EXCESSIVE RETIREMENT BENEFITS

A December 1981 study by the Congressional Budget Office states: "For the typical male railroad worker retiring in January 1983...

retirement income can be as much as 29 percent again as large as his highest net earnings during his working life."

Question 43: Do you agree with this assessment?

(Mr. Oliver) Answer: In a particular set of circumstances--atypical--retirement income of husband and wife can be as much as 129 percent of the husband's highest net earnings. However, this is not a typical benefit: it is one extreme. At the other extreme, a male railroad worker--again atypical--may have a railroad retirement benefit that is only a small fraction of his highest net earnings.

Question 44: Are existing benefits excessive, in view of retirement practices in the rest of the private sector?

(Mr. Oliver) Answer: In a point-by-point comparison, I would consider certain benefits excessive, certain others inadequate.

Question 45: What initiatives are being planned to trim railroad retirement benefits?

(Mr. Oliver) Answer: I am not aware of any at the moment: only a few months ago railroad labor and railroad management did some considerable trimming of railroad retirement benefits.

NEED FOR RAILROAD RETIREMENT BOARD

Question 46: Why is it necessary that the Railroad Retirement System be managed by the Federal government?

(Mr. Adams) Answer: One of the positions underlying the current budget proposal is that the historical reasons for Federal involvement in the railroad retirement system have disappeared. Therefore, it is no longer necessary to involve the Federal Government in the management of the railroad retirement system and the time has come to consider returning the management of that system to the railroad industry in the same manner as in the case of all other industries in the United States today.

(Mr. Oliver) Answer: I believe that most of the same reasons for Federal government participation in the Social Security system would apply to its participation in railroad retirement. In addition, the system is pay-as-you-go; to remove it from the Federal government and make it subject to the ERISA funding requirement could bankrupt whole segments of the railroad industry. To remove it to the private sector would result in many--especially smaller--railroads withdrawing from it and loss of railroad retirement benefits by a great many railroad employees.

(Mr. Chamberlain) Answer: Since its establishment in the mid-1930's, the railroad retirement system has provided retirement security for railroad employees, their dependents, and their survivors on an industry-wide basis, with complete portability of retirement credits when an employee moves from one railroad employer to another and preservation of accrued credits when individuals leave railroad employment at some time prior to retirement. Serious questions exist as to whether the same protection would be available if the system became a private system pursuant to the proposal in question because a private system would be much more susceptible to being undermined, either partially or entirely, by financial difficulties of particular railroad employers. The current system's relationship to the Federal government protects the financial support, in the form of employment taxes, required of railroads experiencing financial difficulties. Indeed, the need for such protection was the prime reason for the system's initial creation, and it can hardly be argued, in view of the economic status of various railroad employers covered by the system, that such protection is not as vital today as it was in the mid-1930's. The unsupported, inaccurate statement in the President's budget that the historical reasons for the Federal government's relationship to the system has disappeared merely reflects the lack of knowledge of the person who prepared that statement as to what were the historical reasons for such a relationship.

Question 47: How feasible would it be to phase out the Railroad Retirement Board, and let other Government agencies handle payment of social security and unemployment benefits?

(Mr. Adams) Answer: I believe it is entirely feasible to phase out this Board and transfer its functions to other agencies, both governmental and private. The argument is made that the current proposal allows insufficient time to deal properly with the chaos it is alleged would result from such a gigantic upheaval. I would point out that, on the retirement side, the primary thrust of the current proposal it to preserve the status quo. Therefore, no gigantic upheaval is contemplated nor should the result be chaos. The expertise of the labor and management representatives on the Board, as well as the expertise of Board employees involved in the retirement program, would be as available to the industry under the private corporation concept as readily as such expertise is available today under the auspices of Federal agency. The current proposal merely contemplates a continuation of the existing program, the policies for which have been set through collective bargaining in the industry and administered under the control of the industry through their two voting representatives on the three-member Board.

On the unemployment side, the current proposal envisions a two-year transition period to enable the several States to make any necessary conforming changes in State law to cover the railroad industry under the State unemployment systems. During this interim period, the present Board would be reconstituted as a singleheaded agency and continue to administer the current railroad unemployment system.

(Mr. Oliver) Answer: The proposal raises many questions that need answering to the Congress' and rail managements' and employees' satisfaction. Why increase the Federal deficit $3,600,000,000 to save one-sixth that amount through 1987 when keeping the system intact would avoid that cost? Why RIF 1,500 employees at a cost to the Federal government of an estimated $25 million when keeping the system intact would prevent that cost?

Why risk bankrupting the railroad by increasing their costs of maintaining the system by reason of ERISA funding requirements?

Why put railroad workers and beneficiaries to the inconvenience and hardship of having to deal with two entities instead of one?

Why jeopardize the retirement benefits of railroad workers by scrapping the law that requires their employers to participate in the system?

Why deliberately set up a system that does away with uniform unemployment eligibility standards and benefits and substitute fifty sets of eligibility standards and fifty schedules of benefits?

Why risk the political consequences of angering 1,500,000 voters by doing away with a system that both rail management and rail employees support and for which employers and employees pay 100 percent of the costs?

Will a paper saving of $.2 billion in 1983 (there is no real saving but only increased costs) and a RIFing of 1,500 employees (at no dollar saving to the Federal government but at a very considerable RIFing cost) outweigh the risks and consequences described?

I think not. At this state, I consider that the proposal put forward by certain people at OMB is not feasible.

(Mr. Chamberlain) Answer: The railroad unemployment and sickness insurance system has been financed entirely by the railroad industry and in its more than 40 years of existence it has not received funds from the Federal government. It provides uniform unemployment benefits for railroad employees throughout the nation, and it also provides sickness benefits for those who are unable to work due to illness or injury. By way of contrast, many of the State unemployment insurance systems are financially troubled and have received millions of dollars in Federal subsidies. They provide varying levels and schemes of unemployment benefits and only a handful provide any sickness benefits whatever. In view of these factors, we are at a loss to determine why anyone would propose the abolition of the railroad unemployment and sickness insurance system. Transfer of railroad employees to the various state systems would be disadvantageous to most employees and to the Federal government as well since the government could very well end up subsidizing the state systems for the costs of picking up railroad employees.

TAXING RAILROAD RETIREMENT BENEFITS

Question 48: How much would be saved if all but the Social Security component of railroad retirement benefits were subject to Federal income tax?

Answer: Information is not available at this time to determine the amount of savings.

Question 49: Are there any other pension plans for private sector workers that offer annuitants retirement incomes that are essentially tax free?

Answer: We are not aware of any other pension plans for private sector workers that provide tax free benefits.

Question 50: What are the pros and cons of taxing railroad retirement benefits?

Answer: The considerations in favor of taxing railroad retirement benefits are those set forth in the recent study released by the Congressional Budget Office entitled "The Railroad Retirement System: Benefits and Financing." These most significant of these considerations is that such taxation would produce additional revenue for the Federal government. In our view, however, it would appear anomalous to consider increasing the taxes imposed on retired and disabled individuals, their dependents, and their survivors at a time when the general policy is to reduce the Federal tax burden on private businesses and individuals.

Since the enactment of the Railroad Retirement Act in the mid-1930's it has been the policy of the Congress that the benefits payable under the Act should be exempt from taxation just as it has been the policy that benefits payable under the Social Security Act, the other social insurance system administered by the Federal government, should be exempt from taxation. This long standing policy was specifically reaffirmed by legislation in 1955 after it appeared that the enactment of the Internal Revenue Code of 1954 might have inadvertently removed the exemption with respect to railroad retirement benefits. It is true, of course, that railroad retirement benefits exceed those payable under the Social Security Act. But it is equally true that railroad employees have paid in the past and are paying today employment taxes at a higher rate than they would have paid if their work had been covered under the Social Security Act. Furthermore, railroad employees have also paid income taxes on the amounts used to pay these higher employment taxes. Having paid these higher taxes and having paid income taxes on these employment taxes, it would, in our view, be inequitable to now tax the retirement benefits derived from the higher employment taxes paid by the railroad community.

REIMBURSEMENTS TO RECIPIENTS OF WINDFALL BENEFITS

Question 51: How did you handle the retroactive payment of windfall benefits, when Congress increased the annual funding level to $379.2 million in December, from the earlier fiscal 1982 level of $350 million?

Answer: When Congress increased the annual funding level for windfall benefits, the Board increased payment from 79 percent of the windfall to 85 percent of the windfall effective with the January 2, 1982 check (payment for the month of December 1981). A mechanical adjustment was made to pay the additional six percent of the windfall that was payable for September, October, and November 1981. The retroactive payment was made on February 16, 1982. Windfall accruals that could not be made mechanically will be handled manually as soon as possible.

COST OF WINDFALL

Question 53: What do you estimate will be the annual cost of paying windfall benefits for each of the next ten years?

Answer: Our estimate of the cost is given in the table below, assuming that windfall is fully funded.

Fiscal Year	Cost (millions)
1983	$430
1984	420
1985	405
1988	345
1989	325
1990	305
1991	285
1992	265

Question 54: How many people who do not now receive benefits under railroad retirement would begin receiving benefits under the Administration's proposal (i.e., if tier I is switched to social security)?

Answer: It is estimated that about 58,000 people would receive direct benefits under social security who do not receive the same benefits under the railroad retirement system. These are mostly children of annuitants, spouses of disability annuitants and parents. However, this figure is misleading, since all but about 4,000 of these beneficiaries are covered under the Overall Minimum provision. This provision guarantees that an employee and his family receive in total benefits at least as much as they would receive under the Social Security Act (SSA). If the Overall Minimum applies, the benefits for the persons ineligible under the Railroad Retirement Act are paid to the employee and his spouse. Currently, there are about 3,300 families receiving benefits under this provision. For the remaining families, the total Railroad Retirement Act benefits, including the tier II, windfall, and supplemental annuity exceed the Overall Minimum amounts. From a certain point of view, it could be said that the tier II amounts include the social security equivalent benefit for these eineligibles; and these benefits should be taken away from the tier II amounts if benefits are paid under social security.

Question 55: How much more in benefits would be paid out?

Answer: We estimate that, for calendar year 1981, the additional amounts paid out by social security would have been $58 million. However, if only the 4,000 uncovered beneficiaries are considered, the amount would have been $10 million.

ACTION

STATEMENT OF THOMAS W. PAUKEN, DIRECTOR

ACCOMPANIED BY:
WINIFRED PIZZANO, DEPUTY DIRECTOR
MARK BLITZ, DIRECTOR OF POLICY PLANNING AND EVALUATION
MARVIN WHITEHEAD, BUDGET DIRECTOR

SUBCOMMITTEE PROCEDURE

Senator BURDICK. We will now hear testimony on the operation of the ACTION agency. Mr. Thomas Pauken, Director of ACTION, is the lead witness.

Please introduce your colleagues and proceed with a summary of your statement. Due to the time constraints, I hope you can summarize.

Mr. PAUKEN. I will try to expedite it, Senator.

INTRODUCTION OF ASSOCIATES

I first would like to introduce, to my immediate left, the Deputy Director of our agency, Winifred Pizzano; to Ms. Pizzano's left is Mark Blitz, who is the Assistant Director for Policy and Planning at the ACTION agency; and to my immediate right is Marvin Whitehead, the Budget Director of ACTION.

We have provided written budget testimony to the subcommittee.

PREPARED STATEMENT

Senator BURDICK. Your prepared statement will be entered in the record at this point.

[The statement follows:]

Statement of Thomas W. Pauken

Mr. Chairman, I am here today to present the FY 1983 Budget for ACTION, the national agency mandated by Congress to support the work of nearly 400,000 volunteers throughout America. For FY 1983, ACTION is requesting an appropriation of $117,721,000. This amount will allow ACTION to operate efficiently in achieving its legislated goal of promoting voluntary service to, for, and by the community in which the volunteers serve. In this time of re-examination of governmental priorities and programs, I am convinced that the ACTION approach of fostering self-help and self-reliance is more vital than ever in order to remove local dependence on federal assistance.

In the past, too many of the Agency's activities contributed to the growing dependency of groups and individuals in the federal government. But it has become apparent in recent years that the solution to problems confronting the poor, the disabled, the elderly, and youth are not to be found exclusively or primarily in government, that bureaucracy is not best suited to solving people's problems and that the answers must be found in people working together. In the wake of the failure of many social programs to provide the expected results, many have come to believe that self and community help constitute the most effective solutions to social and human problems.

President Reagan has insisted on the need to limit the growth of bureaucracy, to return government to the people and to allow people to do for themselves as much as possible. This belief that people can do more through self-reliance than through government paternalism is now the keystone of the ACTION philosophy.

ACTION's programs are about self-help: finding ways for people to help each other without having to depend on the federal government for long-term assistance. ACTION helps people to help themselves, and serves the truly needy. Our programs do not encourage people to "give up" so they can go on federal assistance or to wait for expensive solutions to be found for problems that they can solve themselves. Our programs aim to teach people the "how to" of a solution that allows them to be productive, enterprising, and self-reliant in using their own skills. Last year ACTION's volunteers contributed nearly $335,000,000 in direct volunteer services to their communities. This figure does not take into account the significant hidden value of volunteer presence in a community in the generation of local, state, and private dollars, the recruitment of additional local volunteers, or the long-term effects and tax savings resulting from private sector solutions to social problems.

In formulating the budget for FY 1983, we have made every effort to avoid increasing government expenditures and in fact, this budget represents almost a 9% reduction from the FY 1982 Continuing Resolution funding level. This reduction, however, will not reduce the ability of our volunteers to serve.

In FY 1983 ACTION will continue its emphasis on initiatives designed to integrate its programs with on-going volunteer efforts in the private sector as well as initiatives designed to focus on the problems of youth. Emphasis will be placed on building the support of corporations, national voluntary organizations, state and local government agencies, churches and other organizations which have an interest and concern in the administration of volunteer programs. Efforts to coordinate our programs with other Federal agencies will be continued, and ACTION will implement a plan to serve as a national clearinghouse for model volunteer programs in the private sector.

Youth initiatives will likewise continue to be integrated into major program activities, with particular emphasis on programs that focus on youth-related problems and/or the potential impact of young people as volunteers to address problems such as delinquency, drug abuse, illiteracy, and the plight of runaways.

Program highlights for FY 1983 include the following:

In the Older American Programs, there will be an increase in the number of Retired Senior Volunteers. In spite of a budget reduction, the number of Senior Companions will not be reduced; Foster Grandparents will retain the same budget level and volunteer strength in FY 1982. All of these programs will continue to utilize the skills and talents of citizens over age 60 to meet community needs. Foster Grandparents will continue to serve children with special needs. Senior Companion Program volunteers will emphasize service to the frail elderly, helping them maintain independent living and deferring, preventing, or reversing institutionalization. RSVP will continue to provide community services in the area of energy conservation, health, nutrition, community service, refugee and runaway assistance, child abuse, and drug abuse prevention.

As requested in ACTION's budget submission, VISTA will complete the program's phaseout operation in FY 1982. This phaseout will enable the Agency to focus on its less costly but more effective programs.

Service-Learning Programs will continue to mobilize high school and college student volunteers to assist in community efforts to alleviate poverty and related problems. The National Center for Service Learning will also support the development of new and improved service-learning programs through the provision of information, technical assistance, and training, and through research and demonstration projects, including the Young Volunteers in ACTION program of non-stipended, part-time service by young people aged 14 to 22.

The activities of the Voluntary Citizen Participation Program will include working with state governments, private voluntary organizations, and citizens to expand the scope of voluntary community work. In addition, Volunteer Demonstration Program grants will support the development and testing of national technical assistance projects by private organizations to mobilize and train volunteers to combat drug abuse, illiteracy, and the problems of runaway and homeless youth. Demonstration grants will also explore new methods of grass-roots organization to solve poverty-community problems.

This submission reflects a comprehensive review of the ACTION program and adherence to President Reagan's announced strategy of reducing the overall size and expense of the Federal government. Under this budget ACTION seeks to continue and strengthen the efforts of citizen volunteers to serve their community and their nation. It will allow us to provide effective support and direction to community based projects, to do so in a cost-effective, productive, and efficient manner, and to help implement the President's call for expanded private sector initiatives to solve social problems. It is the efforts of our nearly 400,000 volunteers and the potential for a great expansion of privately initiated and supported volunteer projects that justify the investment of public funds we are requesting. It is our obligation to provide these volunteers with the resources they need to serve.

OVERVIEW

Mr. PAUKEN. Senator, I will only briefly discuss a few of the points of that testimony and then be happy to respond to any questions that you or anyone else on behalf of the subcommittee might have.

I am here today to present the fiscal year 1983 budget for ACTION, the national agency mandated by Congress to support the work of nearly 400,000 volunteers throughout America.

For fiscal year 1983 ACTION is requesting an appropriation of $117,721,000. This amount will allow ACTION to operate efficiently in achieving its legislated goal of promoting voluntary service to, for, and by the community in which the volunteers serve.

In this time of reexamination of governmental priorities and programs, I am convinced that the ACTION approach of fostering self-help and self-reliance is more vital than ever, in order to remove local dependence on Federal assistance.

In particular, I would suggest that one of the strengths of this agency is that with relatively few dollars in seed money, and with our volunteers serving as a catalyst through their personal involvement, ACTION can do a great deal to help people who have significant needs.

Last year our estimates were that ACTION's volunteers contributed nearly $335 million in direct volunteer services to their communities. This figure does not take into account the significant hidden value of volunteer presence in the community and the generation of local, State, and private dollars, and the recruitment of additional local volunteers or the long-term effects and tax savings resulting from private sector solutions to social problems.

Our particular emphasis in the administration has been to build upon the solid foundation of the older American programs.

I notice with interest, Senator, that you chaired the Special Committee on Aging hearings on November 14, 1981, on the problems of rural health. In your own State of North Dakota retired senior volunteers of Stark County and Mandan are working in providing home health care services to people, most of whom are elderly and have been released from hospitals and nursing homes. In addition, in Mandan retired senior volunteers provide various services to two area hospitals.

Again, with a limited expenditure of funds, the enormous experience and wisdom of older Americans is contributed in a positive fashion to help those who are truly in need.

We are focusing on building on that solid base. We propose to fund, with a slight increase in the number of retired senior volunteers, older American volunteer programs at current levels, and in addition we are focusing on some youth initiatives, targeting at the problems of troubled youth, in particular drug abuse, illiteracy, and the plight of runaway youth.

And our thought in what we are developing in line with the older American volunteer programs is the intergenerational approach of young people contributing in a positive fashion through young volunteers in ACTION as well as young people being helped by older Americans who make up such a stable and productive resource in our society.

That is an emphasis and a priority of this administration and this agency at this time.

I know you are familiar with the remarkable work done by older American volunteers through the retired senior volunteers program, the foster grandparent program, and the senior companion program. All of these programs will continue to utilize the skills and talents of citizens over age 60 to meet community needs.

Our foster grandparent program, a program designed to bring low-income elderly to work with children having special needs, particularly the mentally and physically handicapped, will continue, and we hope to expand it in the future. It is an outstanding program and a program that truly makes a difference in the lives of those children who have such difficult and special needs.

The senior companion program will continue at the current level, and it will emphasize service to the frail elderly, in many instances helping people maintain independent living and deferring, preventing, or reversing their institutionalization in nursing homes or hospitals.

I think this is a very healthy example of voluntarism at work, where we encourage people to be able to stay in their own homes rather than to be placed into an institution, where with a little bit of assistance they can maintain that independent living.

In conclusion, Senator, I think one of the interesting things to note is that we now have nearly 400,000 volunteers associated with ACTION programs, and even at a time of budget cuts and of budget constraints we are able to increase the number of volunteers, particularly in the older American volunteer area where people are making such an enormous contribution.

Thank you.

Senator BURDICK. Thank you very much.

Do any other members of the panel wish to say something?

Mr. PAUKEN. We would be happy to respond to any questions, Senator. I know that you are operating under some time constraints, so we would be happy to proceed.

Senator BURDICK. What new initiatives are planned in ACTION programs?

Mr. PAUKEN. Senator, we are concentrating in four areas. In the area of troubled youth we are focusing on the illiteracy projects, working with young people who have particular needs, those who are potential dropouts or real dropouts.

When I was an attorney in private practice many young people came to my office who were in trouble, generally at a minor level, or misdemeanor level, as we call it in Texas, with the law, and so often I would find two or three of the following associated with their problems: Difficult family background, problems of educational deprivation, general illiteracy, inability to handle the basic reading and writing skills, and finally the problem of drug abuse or drug dependence.

We are focusing on those areas, and, again, trying to link our older American volunteers with a corps of young nonstipended volunteers, who will work with their peers in the area of illiteracy, with tutorial work.

In the area of runaways we are working with organizations which have a proven track record in this field, such as Covenant House in New York, and the National Work Alliance organization, which was mentioned in the recent excellent article on the tragic problem of runaways in Parade magazine. We are working with them on providing volunteers and increasing volunteer strength at runaway shelters in order to help these troubled youth.

We also initiated a Vietnam veterans' leadership program, which was kicked off by the President on the day before Veterans' Day, November 10, 1981. In this program Vietnam veterans will be serving as volunteers in recruiting other veterans who have made the successful transition from their experiences in Vietnam to civilian life and can assist others to do the same. We hear so much of the stereotyping of the so-called drug-crazed addict or the guilt-ridden victims that obstensibly make up a significant proportion of Vietnam veterans. In reality approximately 86 percent of the Vietnam veterans, according to the Lou Harris survey done for the Veterans' Administration, have come back and made a successful transition. We are pulling together those successful Vietnam veterans to help some of their fellow veterans who served, particularly the "ground pounders," the combat veterans, the young people who at the time did not have a skill and did not pick up a skill in the military. We are trying to help them, particularly in the area of unemployment and underemployment.

We are excited about that program.

In addition, we are working in the area of Indochinese refugees and trying to help in conjunction with the churches and the private sector, acting as a catalyst to help these people make a successful transition into life in America, both in terms of English as a second language as well as providing job opportunities rather than welfare.

Senator BURDICK. In the past there has been discussion about the advantages and disadvantages of transferring the programs for the elderly to the Administration on Aging. Do you think it would be more efficient if these programs were transferred?

Mr. PAUKEN. I don't think so, Senator, and I think the real authority in this area is the older American volunteers themselves and what they feel and what they believe and how they regard where these programs ought to be. We have heard from around the country, from all of the older American volunteer programs—volunteers, volunteer leaders, and project directors—and they all have expressed a desire to continue in an agency which will give them primary focus and support.

Our view of older Americans, from our perspective as a volunteer agency, is of older Americans not as dependents with unmet needs, but as a productive resource. I think that's our strength, and I think there is a real risk that if these programs were shifted into a larger agency or a bigger bureaucracy that the ability of the volunteers to do enormous good work could somehow be reduced and made more difficult. I think the programs work very fine where they are.

Senator BURDICK. I agree with you. But I understand the VISTA program is going to be scaled back. How do we know which functions ought to be scaled back? Maybe the older Americans?

Mr. PAUKEN. Reducing the older American programs is not the intention of this administration, Senator. In fact, we have taken some budget cuts, but we have not taken them in the older American volunteer programs. I have made my position abundantly clear that I believe these programs should remain in ACTION and should not be, if you will, put into a program over an area or a larger agency where they can get lost. And I say that out of a belief that this is the best place for them to reside, and I do not anticipate any changes in that.

I know the current position of the administration, and it has been a consistent position, is to leave the older American programs within ACTION.

Senator BURDICK. What effect will the establishment of the Peace Corps as an independent agency have on the VISTA program in particular and the ACTION agency in general?

Mr. PAUKEN. Well, I think the Peace Corps separation is going to have a substantial impact. We are in the process of going through the separation at this time. The basic reorganization and interagency agreement between Peace Corps and ACTION should be completed by the end of this month.

It is going to create some difficulties, but I think it is a little too early to predict exactly what will happen.

We have made a substantial effort to try to reduce our program support and overhead. We have had a reduction in force of some 18 percent; we have had a reduction in space of some 13 percent.

Because there are a lot of joint services being performed on behalf of both Peace Corps and the domestic volunteer programs, it is going to take a while to determine how the separation works out. I don't see any immediate effect on VISTA per se. It is in a phaseout situation, but the effect will probably be more strongly felt in the administration and finance section where everything is basically commingled in terms of the two programs.

Senator BURDICK. As language in the reconciliation set the floor for the VISTA program at $16 million for fiscal year 1982 and $8 million for fiscal year 1983, what is the effect of this?

Mr. PAUKEN. I will provide the subcommittee with a letter which I sent yesterday to Congressman Murphy, and also Congressman Perkins, on this issue.

It is our General Counsel's view that the current applicable continuing resolution, Public Law 97–92, provides for a reduction in funding of not more than 6 percent in each program, including VISTA.

I will provide the committee with the specific legal interpretation from our agency.

In addition, we will be requesting a reprograming from the Senate and the House to meet our program support needs for fiscal year 1982. Based upon our belief that it is not appropriate to cut the older American programs, and that is the real alternative we are faced with if we don't take the necessary funds from VISTA funding. We need not only continue the phaseout of VISTA, but to speed it up so it will take place early in fiscal year 1983.

[The information follows:]

[CLERK'S NOTE.—A copy of the administration's legal opinion regarding funding levels for the VISTA program is in the subcommittee's files.]

LETTERS FROM THOMAS W. PAUKEN

February 10, 1982

Honorable Austin J. Murphy
Chairman
Subcommittee on Select Education
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This will respond to your letter of February 1, 1982, making further inquiry with respect to the reductions made in programs authorized by title I of the Domestic Volunteer Service Act of 1973 as a result of the requirements contained in the currently applicable continuing resolution, P.L. 97-92.

As your letter correctly states, funds for the VISTA program authorized by part A of title I of the Act were reduced by six percent, from $16,000,000 to $15,040,000, notwithstanding the provisions of Section 607 of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, placing a $16,000,000 floor under the VISTA program.

We took this action only after careful consideration of both P.L. 97-35 and P.L. 97-92 led us to conclude that P.L. 97-92 intended to impose additional budget cuts on all discretionary programs contained in the Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act unless specifically exempted from reduction by P.L. 97-92, notwithstanding any floor that might be contained in previous authorizing legislation.

If the VISTA program had been exempted from such reductions, as you suggest, it would not have been possible for us to comply with the requirement contained in Section 142(e) of P.L. 97-92 that no project or program be reduced by more than six percent, because programs authorized by parts B and C of title I would have had to absorb a reduction greater than six percent. Since reconciliation is impossible, the rule of law is clear that the later enactment, P.L. 97-92, is controlling. Had the Congressional Research Service had these additional facts, we believe their conclusion would have been the same as ours.

Enclosed is a copy of an opinion prepared by the ACTION General Counsel which explains the legal reasons for our decision in greater detail.

Sincerely,

Thomas W. Pauken

Thomas W. Pauken
Director

February 10, 1982

Honorable Carl D. Perkins
Chairman
Committee on Education and Labor
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

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Enclosed is a copy of an opinion prepared by the ACTION General Counsel which explains the legal reasons for our decision in greater detail.

Sincerely,

Thomas W. Pauken

Thomas W. Pauken
Director

February 9, 1982

MEMORANDUM

To: Thomas W. Pauken
Director

From: Arthur F. Fergenson
General Counsel

Subject: VISTA Program Funding under Public Law 97-92, Continuing Appropriations 1982

You have asked us to review and comment on an opinion provided to Chairman Carl Perkins of the Committee on Education and Labor of the U. S. House of Representatives and Select Education Subcommittee Chairman Austin J. Murphy by the Congressional Research Service which concludes that if less than $16,000,000 is available in fiscal year 1982 for programs under title I of the Domestic Volunteer Service Act of 1973, the entire amount must be made available to VISTA. The opinion also concludes that if more than $16,000,000 is available for programs under title I, the first $16,000,000 must be made available to support the VISTA programs.

For the reasons stated below, it is my view that this opinion is an error, and that ACTION is authorized to reduce the VISTA budget by up to six percent of the $16,000,000 earmark contained in the Omnibus Budget Reconciliation Act, P.L. 97-35. Indeed, failure to reduce the VISTA budget below $16,000,000 would be unlawful.

Section 607(a) of the Omnibus Budget Reconciliation Act amended Section 501 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. §5081) to read as follows:

> "There is authorized to be appropriated to carry out title I of this Act $25,763,000 for fiscal year 1982 and $15,391,000 for fiscal year 1983. Of the amounts appropriated under this Section, not less than $16,000,000 shall first be available for carrying out part A of title I for fiscal year 1982, and not less than $8,000,000 shall first be available for carrying out part A of title I for fiscal year 1983."

As correctly noted in the Congressional Research Service opinion, the effect of this provision is to put a "floor" under the VISTA program authorized by part A of title I of the Domestic Volunteer Service Act of $16,000,000 for fiscal year 1982, and $8,000,000 for fiscal year 1983.

Funds to support programs under the Domestic Volunteer Service Act for fiscal year 1982 were appropriated as part of P.L. 97-92, the continuing resolution enacted December 15, 1981. Section 101 of the continuing resolution authorized expenditure of sums for programs authorized by the Domestic Volunteer Service Act at the rate contained in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (H.R. 4560) as reported by the Senate Commitee on Appropriations tc the Senate on November 9, 1981. The amount appropriated for title I of the Act by the Senate version of H.R. 4560 was $19.6 million, of which $16 million was designated for VISTA, as required by the earmarking provisions of P.L. 97-35, $1.830 million was designated for Part B Service Learning Programs, and $1.884 million was designated for Part C Special and Demonstation volunteer programs.

The Congress, however, voted additional cuts in appropriations in section 142 of P.L. 97-92. These provisions, as they affect ACTION provide:

> "Sec. 142(a). Notwithstanding any other provision of this joint resolution, and except as otherwise provided in this section, total budget authority provided by this joint resolution for appropriation accounts for which provision would be made in the following Appropriation Acts:
>
> * * *
>
> the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1982
>
> * * *
>
> shall be reduced by 4 percentum...
>
> (c) The reductions made by subsections (a) and (b) shall be applied proportionally to each appropriation account...
>
> * * *
>
> (e) The reduction made by this section shall be applied so that the budget authority provided in this joint resolution within any appropriation account for any program or project shall not be reduced by more than 6 percentum.
>
> (f) The reduction made by this section shall be applied so that no program or project shall be terminated....
>
> * * *
>
> (h) This section shall not apply to any appropriation account, program or project for which budget authority is provided by a 1982 appropriation Act enacted into law subsequent to the enactment of this joint resolution."

It is worth noting that the subsections omitted above contain a substantial number of exceptions to the general reduction, showing clearly that the Congress knew which activities it wished to exempt from the general budget cut.

Representative Silvio Conte, the proposer of the resolution ultimately adopted, said:

> "This resolution provides that the Labor, Health and Human Services, and Education programs be funded at a rate which is the lower of the House-passed or the Senate reported Labor HHS-Education bills...
>
> Then, to this basic rate we have made certain exceptions for key human service, edcuation, and health programs that we believe are particularly critical to this Nation...
>
> [T]he real point is that to the basic rate we made some adjustments in these very vital health and human service programs to make sure that their funding levels would preserve them as effective, productive programs: House $454; Senate $344; total add-ons $788.
>
> Then this resolution applies a 4 percent reduction to virtually every discretionary account..." Cong. Record (daily ed.) Dec. 10, 1981, H9109
>
> "The language of the substitute is clear... my intent is a 4 percent cut in an account, with no more than 6 percent in any project or program within an account." Ibid, H9116

The elements of Mr. Conte's appropriation bill may be summarized as follows:

1. An overall 4 percent cut in each appropriation account. ACTION's domestic programs all fall within one account.

2. Discretion given to the Administration to reduce any program or project within an account by not more than 6 percent, within the overall 4 percent limit.

3. No project or program to be terminated as a result of the cut.

4. An opportunity for the Congress, when it considers individual appropriation Acts, to restore cuts made by the continuing resolution.

There is nothing in the continuing resolution, or in its history to indicate that VISTA was to be exempted from these provisions.

Mr. Natter of the Congressional Research Service has quoted from "Statutes and Statutory Construction," a leading work in the field:

> "In terms of legislative intent, it is assumed that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter, wherefore it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together.
>
> * * *
>
> ...But if there is an irreconcilable conflict between the new provision and the prior statutes relating to the same subject matter, the new provision will control as it is the later expression of the legislature." Sands, Statutes and Statutory Construction, §51.02 (Fourth Ed., 1974).

In my opinion, there is an irreconcilable conflict between section 607 of P.L. 97-35 and section 142 of P.L. 97-92, and the latter enactment must prevail. The House of Representatives debates on P.L. 97-92 quoted above show that the proposer of the legislation eventually adopted (Mr. Conte) went into considerable detail in describing exceptions to the basic 4 percent reduction rule for what he described as "very vital health and human service programs." There is, however, no mention anywhere in the debate of VISTA or other ACTION programs. There is no doubt that the Congress intended P.L. 97-92, including the budget cut provisions, to apply to ACTION and its programs. If previous enactments are in conflict with P.L. 97-92, they must yield to it.

The CRS opinion states that there is no irreconcilable conflict, and that both P.L. 97-35 and P.L. 97-92 can be reconciled. This is clearly not so. The CRS opinion does not consider the impact of such a conclusion on ACTION programs other than VISTA. The total appropriation for all of title I of the Domestic Volunteer Service Act, prior to making the cuts required by P.L. 97-92, was $19.714 million. A four percent cut in this amount requires a reduction of $788,560. If, as the CRS opinion suggests, this sum should be taken first from part B and part C programs, the resulting reduction in programs and projects authorized by those parts of title I would obviously be far in excess of the six percent reduction which is the maximum authorized by P.L. 97-92, since the total appropriation for these programs was only $2.714 million. It is therefore impossible to comply with both P.L. 97-35, as interpreted by CRS, and with the plain language of section 142 of P.L. 97-92, which prohibits a reduction in any program or project of more than six percent.

Since P.L. 97-92 supersedes the "floor" for VISTA contained in section 607 of P.L. 97-35, it also seems clear that section 142 of P.L. 97-92 should be applied in its entirety, and that the Director of ACTION is vested with authority to determine how much of a reduction, up to a maximum of six percent, should be made in the VISTA program in the overall interest of the Agency. Representative Conte's proposal for budget cuts was a single, integral scheme which had as an essential element limited agency discretion. (See Congressional Record, December 10, 1981, H9108 (daily ed.))

For the reasons stated above, it is my opinion that you, as Director of ACTION, are required to reduce the overall level of obligations by the Agency by four percent, and that section 142 of P.L. 97-92 authorizes you, notwithstanding section 607 of P.L. 97-35 to reduce the level of obligations for the VISTA program by not more than six percent.

February 1, 1982

Mr. Thomas Pauken
Director - ACTION Agency
806 Connecticut Avenue, N.W.
Washington, D.C. 20525

Dear Mr. Pauken:

Thank you for responding to the questions submitted to ACTION on November 17, 1981. We appreciate the effort made to inform this committee.

We are quite concerned, however, by the response to question number 16, which states: At the present funding level of $15,040,000 ACTION would train and place approximately 2235 VISTA volunteers.

As you know, the statutory language contained in P.L. 97-35, which authorizes funding for the Domestic Volunteer Service Act through fiscal year 1983, places a funding floor under part A of title I. The floor is $16 million for fiscal year 1982 and $8 million for fiscal year 1983. It appears that the $15,040,000 is calculated from a provision of the current Continuing Resolution which permits reduction of programs within an appropriations account by six percent. However, there is no authority contained in the Continuing Resolution which would permit the reduction of a funding floor where such reduction is not made necessary by the required four percent reduction in an appropriations account. Thus, a reduction of the $16,000,000 floor is a clear violation of the statute. A question put to the American Law Division of the Library of Congress confirms this conclusion. We have enclosed a copy of the American Law Division response.

We shall appreciate your prompt adjustment of the budget for VISTA to reflect the statutory mandate.

Very truly yours,

Carl D. Perkins
Chairman
Committee on Education
and Labor

Austin J. Murphy
Chairman
Subcommittee on
Select Education

January 21, 1982

FROM : American Law Division

SUBJECT: VISTA Program Funding Under Public Law 97-92, Continuing Appropriations, 1982

This memorandum is in response to your request for a written opinion regarding funding levels for the VISTA program. In particular, you asked whether or not the provisions of the Continuing Resolution enacted on December 15, 1981, Public Law 97-92, override contrary provisions contained in the Omnibus Budget Reconciliation Act, Public Law 97-35, enacted into law on August 13, 1981.

The provisions in question in the Reconciliation Act may be found at section 607. This section states that with respect to the Domestic Volunteer Service Act of 1973:

> There is authorized to be appropriated to carry out title I of this Act $25,763,000 for fiscal year 1982 and $15,391,000 for fiscal year 1983. Of the amounts appropriated under this section, not less than $16,000,000 shall first be available for carrying out Part A of title I for fiscal year 1982, and not less than $8,000,000 shall first be available for carrying out Part A of title I for fiscal year 1983.

* * *

Thus, the Reconciliation Act appears to put a "floor" under Part A of Title I of the Domestic Volunteer Service Act of $16,000,000 for fiscal year 1982 and $8,000,000 for fiscal year 1983.

On the other hand, section 142 of the Continuing Resolution provides that "... total budget authority provided by this joint resolution for appropriation accounts for which provision would be made in ... the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriation Act, 1982, ... shall be reduced by 4 per centum."

Your question, as we understand it, is whether or not this 4 percent reduction in appropriated funds acts to negate the "floor" spending provisions contained in the Reconciliation Act.

A well established maxim of statutory interpretation provides that a later statutory enactment takes precedence over a prior inconsistent law passed by a body of equal rank, if it is not possible to construe them together. The policy behind this maxim has been concisely explained by Professor C. Dallas Sands in his work entitled "Statutes and Statutory Construction":[1/]

> In terms of legislative intent, it is assumed that whenever the legislature enacts a provision it has in mind previous statutes relating to the same subject matter, wherefore it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together.
>
> * * *
>
> . . .But if there is an irreconcilable conflict between the new provision and the prior statutes relating to the same subject matter, the new provision will control as it is the later expression of the legislature.

In the instant case, there does not appear to be [illegible] conflict between the two statutes. The Reconciliation Act provides authorization for appropriations, but does not actually appropriate any funds. It then provides that of the amounts appropriated, not less than $16,000,000 shall first be available for carrying out Part A in fiscal year 1982, and not less than $8,000,000 shall first be available for carrying out Part A in fiscal year 1983. It does not mandate that at least $16,000,000 must be appropriated for fiscal year 1982, or that $8,000,000 must be appropriated in fiscal year 1983. It merely states that of the money which is appropriated, it first must be available for Part A in each fiscal year, until certain floor levels are reached. Thus, if less than $16,000,000 is available in fiscal year 1982, after the 4 percent reduction mandated by the continuing resolution, all of those funds must be spent in accordance with the Reconciliation Act, which directs that it be available for carrying out Part A. If more than $16,000,000 is available, then at least $16,000,000 must be available for carrying out Part A.

We hope that this information will be of assistance to you. Please feel free to contact our offices in the future.

Raymond Natter
Legislative Attorney

[1/] C. Sands, Sutherland Statutes and Statutory Construction § 51.04 (4th ed. 1974).

VISTA PHASEOUT

Senator BURDICK. As far as you know, that was in the plans, to phase out VISTA completely?

Mr. PAUKEN. Yes, Senator, to phase it out in fiscal year 1983.

To replace VISTA, we are developing such new alternatives as young volunteers in ACTION which rely on nonstipended volunteers, to work in the areas of drug abuse, illiteracy, and runaway youth. The agency will also provide technical assistance to enable volunteer efforts to be set up to alleviate the problems of troubled youth.

We think that makes more sense than the VISTA program. In the hearings before this subcommitee last year and in the 1979 House Appropriations Committee hearings serious questions were raised about the abuses of VISTA, resulting in changes in the legislation. Unfortunately, there are not just a few exceptions. There were significant abuses.

We are going to try to take the most worthwhile VISTA programs and efforts and incorporate them into either the older American volunteer program or the youth initiatives.

For example, in your State there is an excellent VISTA project involving older retired farmers helping small farmers. That's the kind of project which ought to, in one fashion or another, go into an older American volunteer program.

A VISTA literacy project out in the northwestern part of the United States will be continuing, but it will be under the auspices of our young volunteer in ACTION program.

We feel encouraged by the initial response to that program and by the willingness of young people to volunteer on a nonstipended basis.

Senator BURDICK. In 1983, then, VISTA will be supported by voluntary contributions except for some technical assistance?

Mr. PAUKEN. It is our plan that by fiscal year 1983 there will be no VISTA program per se. It will be replaced by our program for young volunteers, which will be basically modeled on the retired senior volunteer program in which there is a project director and a very small administrative staff which then recruits unpaid volunteers. This program model has been very successful in your State as well as throughout the United States, and that's the model for the young volunteers of America. There are young volunteers in ACTION programs in 12 communities right now, and we hope to be in some 30 communities by the end of fiscal year 1982. In fiscal year 1983 we plan to have YVA programs in approximately 55 communities.

We are excited about that new initiative and the opportunity it will afford many more young people to serve as volunteers on a regular basis in an unpaid fashion.

Senator BURDICK. What is the prognosis for the senior companion program?

Mr. PAUKEN. Our proposal is to fund it at current levels to maintain the current number of senior companions, Senator. I have a personal interest in the idea, whether it is called a senior companion program or whether it is alternative efforts to utilize volunteers, to enable people to stay in their homes rather than be forced into an institution.

I spent a little time in Denver, Colo., meeting and listening to about 100 senior companions describe what they did and how they helped people stay in their homes, people who were nearly blind or who had some difficulties but with a little assistance were able to stay in their homes rather than to go into nursing homes. And I think that is an area in which we would be very interested in exploring other options.

We have been talking with people at HHS who are interested in the expansion of the use of volunteers to enable people to stay in their homes rather than to have to go into institutions, and we support that concept wholeheartedly.

Senator BURDICK. How much money for that program?

Mr. PAUKEN. $12 million. It is maintained at current levels. As I said, we did everything we could to avoid cutting from the older American programs because we believe in them very strongly.

SUBMITTED QUESTIONS

Senator BURDICK. I think that completes it. We may have some questions to submit to you in writing. Thank you for coming.

Mr. PAUKEN. Thank you, Senator.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY SENATOR BURDICK

VISTA

Question. The President originally requested $20.7 million for the VISTA program for fiscal year 1982, and $10 million for the program in fiscal year 1983.

Did OMB mandate ACTION to accelerate the phaseout of VISTA, or did you request OMB to accelerate the phaseout and provide VISTA with little or no money in fiscal year 1983?

Answer. The decision to phase the VISTA program out in fiscal year 1982 was jointly arrived at by ACTION management, other administration officials, and OMB. It was based on several factors, among them: The necessity to reduce Federal spending; a reassessment of the cost-effectiveness of the program (approximately $7,000 per service year); and the conviction that part-time nonstipended volunteers are the most effective means of broadening opportunities for volunteer service in local communities and lessening the dependence of volunteer sponsors on Federal funding.

We feel that, since the VISTA program does not fulfill the role envisioned by this administration for Federal involvement in local affairs, we can best achieve the administration's goals for ACTION by phasing the VISTA program out during fiscal year 1982 and turning our energies toward other activities in support of the President's policy encouraging widespread nonstipended voluntarism and involvement of the private sector in the resolution of local community problems.

Question. How can you justify asking this committee for an additional 50-percent reduction in VISTA, the ACTION agency's only full-time volunteer program, and at the same time request a $3 million increase in the agency's support budget?

Answer. The estimate shown in the fiscal year 1982 column of the agency's fiscal year 1983 budget submission for program support ($28,784,000) is consistent with the amounts obligated in fiscal year 1981 ($28,794,000) and is less than the amounts requested by the President in March ($30,091,000) and October 1981 ($29,365,000). We will be forwarding to the committee in the next few days a letter describing the circumstances which require us to reprogram funds from VISTA for our current program support requirements, which cannot be met by the amount stipulated in the Senate markup of our fiscal year 1982 appropriation request ($25,663,000). Briefly the reasons for the reprograming can be summarized as follows: Increased uncontrollable costs for such items as building rents, telecommunications, and postage; anticipated costs associated with the establishment of a support structure separate from Peace Corps; and expenses resulting from the November 1981 reduction in force, including severance pay and lump sum annual leave payments, and unemployment compensation reimbursements.

It is extremely difficult to tie the size of our program activities to the level of support necessary for those programs so that a reduction in programs automatically results in a concomitant decrease in support requirements. Early in fiscal year 1981 we took steps to streamline our program delivery and support structure, a move which resulted in the reduction of full-time permanent employment in the agency by 18 percent (175 employees). By the end of fiscal year 1982 we will have an on-board strength of 531 full-time permanent employees, only 52.7 percent of the staff at the beginning of the year. The savings from these reductions will be realized in fiscal year 1983, when our request for program support is nearly $3 million below our current requirements for fiscal year 1982.

Question. Are you trying to tell us that a 10-percent budget cut accounted for a 50-percent reduction in the number of volunteers?

Answer. The $3.2 million rescission in fiscal year 1981 prevented the placement of VISTA trainees after May 1, 1981. At that time, there were 4,439 volunteers in the field. By the end of the fiscal year, September 30, 1,789 of these had terminated through normal attrition and completion of service; 2,650 volunteers remained in active service, a reduction of 40 percent. Because the VISTA budget is influenced primarily by service years (work years) funded or earned, a comparison of the number of volunteers serving at two points in time will not offer an accurate measure of expenditures. For example, VISTA's actual obligations in fiscal year 1981 were $30,479,000, 1.7 percent more than in fiscal year 1980. This amount funded 4,208 volunteer service years, 5.7 percent more than in fiscal year 1980, even though no new volunteers were placed in the last 5 months of the year.

Question. How many VISTA's are there today?

Answer. As of January 31, 1982, 1,367 volunteers were serving in VISTA.

Question. What effect will the establishment of the Peace Corps as an independent agency have on the VISTA program in particular?

Answer. Section 2A of the International Security and Development Cooperation Act of 1981, which separated Peace Corps from ACTION, has caused substantial change to both organizations. The administration opposed this measure. Among the functional transfers necessitated by the separation was that involving ACTION's Office of Recruitment and Communication and Office of Administration and Finance. The recruitment arm of ORC was responsible for recruitment and evaluation of volunteers for both Peace Corps and VISTA. Since the principal efforts of this office had related to Peace Corps recruiting at the time of enactment of the legislation mandating separation, the office and its staff were transferred.

The Office of Administration and Finance performed claims processing for VISTA volunteer health benefits. If VISTA continues past fiscal year 1982, we will be substantially understaffed. Also, the outplacement assistance for former volunteers will be eliminated.

Question. As language in reconciliation set the floor for the VISTA program at $16 million for fiscal year 1982, and $8 million for fiscal year 1983, what would be the effect of removing this floor as is to be proposed as part of the President's legislative package?

Answer. Removing the fiscal year 1982 VISTA floor of $16 million, reduced to $15.04 million under the continuing resolution, and the fiscal year 1983 VISTA floor of $8 million would permit the agency to reprogram sufficient funds to meet support requirements for all of its volunteer programs through the end of the fiscal year. Without removing the fiscal year 1982 floor, ACTION is faced with severely limited choices if it is to continue to administer its volunteer programs and avoid violation of the Anti-Deficiency Act. The choices include taking funds from the older American volunteer programs, a drastic furlough of approximately 8 unpaid weeks for every ACTION employee (40 percent of their salary for the last 6 months of the fiscal year), or a reduction in force of two-thirds of the employees remaining in the agency (an 18-percent reduction in force was already conducted last November). The latter two options would devastate the effectiveness of the support we could render the volunteer programs. Without a fiscal year 1983 floor, the VISTA program will be closed down at the end of fiscal year 1982, 6 months earlier than currently planned.

Question. What effect will the establishment of the Peace Corps as an independent agency have on the ACTION agency in general?

Answer. Pursuant to the requirements of section 2.A of the International Security and Development Cooperation Act of 1981, 283 permanent positions along with related property and 6,478 cubic feet of records were transferred from ACTION to Peace Corps. New accounts were established at Treasury for all unexpended Peace Corps funds. About 80,000 square feet of office and special purpose space was made available to Peace Corps to augment space already used by Peace Corps.

Prior to enactment of the legislation separating Peace Corps from ACTION, the two agencies shared a wide range of cost-effective support services. Provision had existed for joint support of ACTION and Peace Corps in the areas of accounting, contracting, health services, library, mailroom, computer services, print shop, personnel security, and other administrative services. Although ACTION and Peace Corps have entered into an interagency agreement to maintain joint support for the balance of fiscal year 1982, fiscal year 1983 will witness duplication of certain functions.

The immediate effects of the separation of the Peace Corps from ACTION are reflected in attachments itemizing personnel transferred, contract management, interagency agreements, jointly funded purchase orders, contracts transferred, property transferred, records transferred, and appropriation and fund transfers.

The short-term effects of the separation of Peace Corps from ACTION are organizational disruption, increased costs, tension among staff and cleavage of field program and recruiting operations, many of which will continue to share the same office space.

Longer term effects of the separation are more difficult to assess. The arguments pro and con over these issues as raised during the debate in the Congress are fresh in memory. Ultimate costs and lessons learned will doubtless be realized long after the damage has been done.

[CLERK'S NOTE.—A list of ACTION property, personnel, contract, and other matters transferred to the Peace Corps and interagency agreements is available from the subcommittee's files.]

Question. The justification submitted with our budget mentions a reprograming request to be submitted shortly. Could you provide us some details in this regard?

Answer. The continuing resolution under which the agency is operating through March 31, 1982, provides that the funds available are based on the Senate mark (which is less than the bill approved by the House), less 4 percent, a formula which results in an annualized funding level of $128,906,000. While we are able to operate within this total amount, the way in which the Senate committee allocated the resources by activity, especially program support, causes us significant problems.

As I mentioned previously, due to our ongoing requirements plus such extraordinary factors as uncontrollable cost increases, startup costs for support systems separate from Peace Corps, and obligations deriving from last fall's reduction in force, we find it virtually impossible to reduce our support needs below $28,784,000, which is $3,121,000 more than the Senate allocated for this activity but $1,307,000 less than we originally requested for this purpose. We have, therefore, requested a change in our authorizing legislation or a clause in the next continuing resolution which will remove the funding minimum for VISTA, thereby enabling us to take the necessary funds from that program activity to meet our support requirements.

The only other alternatives we have are taking the necessary additional funds from the older American volunteer programs, which under our current proposal we are able to maintian at 98.7 percent of the level stipulated in the Senate mark, or the drastic measure of instituting a furlough of as many as 8 unpaid weeks for every ACTION employee, which would reduce their base pay by 40 percent each pay period for the remainder of the fiscal year. We feel that neither of these options is as viable as that offered by phasing the VISTA program out in fiscal year 1982.

SENIOR COMPANION AND OLDER AMERICAN VOLUNTEER PROGRAMS

Question. Could you briefly describe how the senior companion program functions and whether you anticipate any changes in its method of operation in the near future?

Answer. Senior companions are low-income persons, 60 years and older, who provide personal assistance and companionship primarily to older persons. These older persons have mental, emotional and physical impairments, and need help to achieve and maintain their fullest potential, to be healthy, and to manage their lives independently.

The program also provides volunteer opportunities for low-income older people which enhance their ability to remain active and provide critically needed community services.

Senior companions serve three to five clients 4 hours a day, 5 days a week, and receive a stipend of $2 per hour. Projects assist with transportation and lunch expenses, and provide an annual physical examination and liability insurance. An amount equal to 90 percent of Federal funding must be distributed to volunteers as direct benefits.

The program coordinates and places volunteers through direct health service care providers, social service agencies, and Federal and State long-term care networks.

During fiscal year 1982, the senior companions will concentrate its efforts in three major areas: Improve management to maximize volunteer opportunities within existing resources; support and expansion of new initiatives in drug abuse, and promotion of increased non-ACTION support for the program. Private sector funding will continue to be explored and supported through a variety of mechanisms.

Question. What has been the impact of the senior companion program in avoiding long-term institutional services?

Answer. A longitudinal research and evaluation effort is in progress which will soon provide comprehensive information about the program's impact on the avoidance and the delay of institutionalization of persons served by companions.

ACTION is conducting a 4-year study on the relationship between senior companions' activities and the physical and mental health status of their clients. By July 1983, when the study is finished, comprehensive data will be available on an estimated 1,300 to 1,500 functionally impaired older persons served by 300 to 370 companions. The client sample includes both institutionalized and noninstitutionalized persons.

This representative sample will provide ACTION ample information from which accurate statements can be made about the impact of the program nationwide. A subpart of the study will relate specifically to the impact on in-home clients who might otherwise become institutionalized.

Since 1976, ACTION has directed most of its resources in support of noninstitutionalized senior companion client placements. In recent years, a number of model projects have been initiated to test the feasibility of integrating companions into health and social service care plans for in-home clients. These and other projects have demonstrated that concerned and knowledgeable older persons can perform a unique role in moderating some of the consequences of growing old alone, frail and afraid.

Another indicator of the usefulness of the program has been the multiplier effect of the program nationwide. Five State agencies on aging and three Department of Labor funded senior community services employment programs are operating programs modeled after senior companion program. In addition, there are three non-ACTION funded projects that operate under senior companion program's guidelines, drawing on support for direct volunteer benefits from non-Federal sources.

Question. How many older Americans are participating in the program at this time? Will the number of participants be increased during fiscal year 1983?

Answer. During fiscal year 1982, an estimated 4,200 senior companions will serve approximately 15,000 persons in a total of 77 projects located in 50 States, the District of Columbia, and Puerto Rico. We do not anticipate any change in this volunteer level in fiscal year 1983.

Question. How many older adults were served by senior companions during the last fiscal year?

Answer. Approximately 13,000 older adults were served by senior companions in fiscal year 1981.

OLDER AMERICAN VOLUNTEER PROGRAMS

In the past there has been discussion about the advantages and disadvantages of transferring the programs for the elderly to the Administration on Aging.

Question. Do you think it would be more efficient if these programs were transferred, especially now that the VISTA program is being scaled back?

Answer. No, the older American volunteer program would not be more efficient if transferred to the Administration on Aging.

The primary focus of ACTION's older American programs is on the concept of the older American as a productive resource not as a dependent client.

The Administration on Aging is principally concerned with providing services to the low-income and frail elderly. However, the 1980 census figures show that 83 percent of the elderly are above the poverty level and that 69 percent enjoy fair to good health. The older American volunteer programs are unique in providing volunteer service opportunities to the majority of the elderly. Transferring the programs to the Administration on Aging, a much larger agency with a client-dependent philosophy on aging issues, could risk endangering this uniqueness.

It is significant that, the aging constituency, including leaders of the Western Gerontological Society, the American Association of Retired Persons, and the project directors of the foster grandparent program, retired senior volunteer program, and senior companion program, as well as the volunteers themselves, are opposed to transferring the older American programs from ACTION to the Administration on Aging.

Question. To what extent is the older American volunteer program designed so that community efforts could take them over?

Answer. Each foster grandparent project and senior companion project is required presently to achieve a minimum of 10 percent local funding. Many achieve a higher level, the average amount of local support is 16 percent for the foster grandparent program and 13 percent for the senior companion program. Eleven projects are totally funded by the State. The volunteer stipends in the foster grandparent program and the senior companion program involve costs which make them viable under State funding but are expensive for most communities.

The retired senior volunteer programs, however, presently average over 40 percent local support. Community commitment increases with the age of the project in most areas. The average Federal funding is $30,000 to $35,000, an easier burden for the local community to assume.

Question. With the phasing down of the VISTA program, to what extent will volunteer services to older persons performed by VISTA volunteers be continued?

Answer. One major premise of the VISTA program is that its volunteers should not be regarded as permanent resources of any community, but should transfer their expertise to local residents who would be able to carry on the efforts long after the VISTA's leave. This principle enables communities to continue services begun by the volunteers.

Additionally, ACTION's older American volunteer programs have demonstrated through the years that services to older persons can be performed by older volunteers. The retired senior volunteer program volunteers are active nationwide in the meals-on-wheels program, in food and crop gleaning programs, in energy conservation assistance, and so forth. In addition, the senior companion program volunteers serve mostly the frail elderly, preventing institutionalization and expediting deinstitutionalization.

Question. Will the over age 60 VISTA volunteers be able to transfer to one of the older American volunteer programs?

Answer. Approximately 15 percent of VISTA volunteers are over 60. There is no guarantee every older VISTA volunteer will be able to transfer instantly to one of the older American volunteer programs. There are geographic limitations; older American volunteer projects are not located everywhere. However, there are 727 retired senior volunteer projects nationwide, all of which are capable of enrolling new volunteers upon request. Foster grandparent program and senior companion program projects are more limited due to cost per volunteer and low income requirements. Many foster grandparent program and senior companion program projects maintain waiting lists. Both programs have a marginal turnover rate due to deaths and retirements, and VISTA volunteers who qualify should not experience a lengthy delay in being placed.

Question. What is the demand for participation in the older American volunteer program; for example, how many persons apply to become volunteers under each of the programs each year, and what is the extent of the waiting lists for the programs?

Answer. Each older American volunteer project is responsible for recruiting its own volunteers. To avoid creating false expectations for applicants beyond the projects' abilities to accommodate a certain number of volunteers, most local projects coordinate recruiting efforts with their attrition experience.

Foster grandparent and senior companion programs have minimal recruitment activity for operational projects. When a new project is started, the demand for enrollment is generated. There are 18,100 foster grandparents and 4,200 senior companions enrolled in their respective programs. The annual attrition rates are well below 10 percent. We have no data relating to the number of foster grandparent applicants each year. However, of 400,000 eligible and willing low-income elderly, only 4.5 percent are now serving as foster grandparent volunteers. As for senior companion program, in 1981, 67 local projects reported 1,946 applicants put on the waiting lists, an average of almost 30 per project.

The retired senior volunteer program is another matter. Project enrollment for retired senior volunteer program volunteers range from a low 100 to a high of 7,400. Recruitment and enrollment is always based on community demand for their services and the availability of funding. According to a Harris poll conducted for NCOA, only 3.5 percent of 9 million willing and able to serve are now enrolled as retired senior volunteer program volunteers.

Question. What effect will the phase-down of the VISTA program have on the recruitment of volunteers for the older American programs in ACTION?

Answer. None. Each foster grandparent program, retired senior volunteer program, and senior companion program project recruits its own volunteers. There is no ACTION recruitment service for older American volunteer programs.

Question. What new initiatives are planned in ACTION programs?

Answer. With exception of the Vietnam veterans leadership project, a common thread runs through all of ACTION's recent initiatives. They are intended to help young people overcome the problems peculiar to their generation and, at the same time, to call upon their idealism and energy in service to their communities—a natural civic impulse we believe they must begin to fulfill when they are young, if we are to preserve it for the Nation's future.

Young volunteers in ACTION.—ACTION has developed a new program called young volunteers in ACTION, which is currently in place at 12 sites nationally and which we hope to expand to approximately 30 locations during fiscal year 1982. This program is designed to enlist young people aged 14 to 22 in part-time, nonstipended service to their communities. Young volunteers perform a wide range of community service, from visiting the elderly in nursing homes, weatherization and neighborhood cleanup, to tutoring those even younger who need academic assistance. The projects operating under this program are expected to pay special attention to the needs of the poor and to the problems of troubled young people—their peers.

Drug abuse prevention.—The drug abuse prevention projects will focus on youths, their parents, their schools, and communities. ACTION will test peer guidance and educational models utilizing teenage volunteers who can offer accurate information and positive images to their peers. It will also support volunteer activity involving parent groups educating themselves about drugs in order to work with the school and the community and to support one another in attempts to create a drug-free environment for their children. ACTION will provide technical assistance information on forming volunteer organizations and will support dissemination of the most recent scientific and medical information regarding the harmful effects of drugs on children and youth. ACTION will also assist local businesses and major corporations in designing and implementing prevention plans for themselves and their communities.

Runaway youth.—ACTION will support technical assistance to organizations seeking to establish shelters in cities where concentrations of runaway youth create severe problems. The agency will also fund volunteer training models for runaway shelter and group home personnel in order to help them make effective use of volunteers who are able to provide highly specialized services to residents of shelters and group homes.

Literacy.—ACTION will fund the expansion of tutoring programs currently sponsored by volunteer organizations, enabling these projects to reach previously unserved locales, explore joint projects with a varitey of tutoring programs, and develop corporate support and involvement with a view toward a national campaign to increase literacy.

Refugees.—The refugee youth employment support program is the agency's newest initiative. ACTION volunteers assist Cambodian youth (ages 16 to 21) on a one-to-one basis in seeking jobs and providing followup support once they have found a job. The program operates with $115,000 remaining from an interagency agreement with the Department of Labor and is administered by mutual assistance agencies in the Washington, D.C., and Los Angeles-Long Beach, Calif., areas.

In addition, the Cuban-Haitian entrant program is being funded with a transfer of $500,000 from the Department of State's Bureau of Refugee Programs. This project enables volunteers to work with local refugee assistance agencies in Florida in areas with large Cuban and Haitian refugee populations.

Vietnam veterans leadership project.—The Vietnam veterans leadership project enlists the experience and understanding of those who have served in Vietnam and who have made a successful transition to civilian life. The volunteers assist their fellow veterans in obtaining counseling, employment, and other forms of support in their communities. The program has begun with several pilot projects throughout the United States with prospects of rapid expansion.

ACTION volunteers use their leadership and professional skills and community and local government contacts to encourage Vietnam veterans to fully use community, government, and veteran organization resources. Recognizing the differences amoung communities, the program assists local initiatives, as opposed to imposing a single design on all communities.

Question. What plans are being made to facilitate the availability of unpaid volunteers to help staff programs as Federal funds are withdrawn?

Answer. Regardless of the level of Federal funding available to programs which provide social services, ACTION continues its commitment to the encouragement of their use of volunteers. That is, volunteering under any circumstances is both a civic obligation and a personally rewarding experience for the volunteer. Nonetheless, we recognize that some social service programs have become in great measure dependent upon Federal funding which is now less available. Therefore, ACTION is assisting those programs, both public and private, which are highly regarded by their communities and thus merit continued existence to expand their use of volunteers and to generate expanded private sector support. At the same time, and more importantly, we are directing a portion of our resources to the expansion of private voluntary associations which have proven effective and which have historically relied upon local or private support.

To achieve these goals, ACTION has undertaken the following initiatives:

A series of national workshops on volunteerism, cosponsored by the White House. These workshops bring together local, county, and State government officials, corporate leadership, and representatives of exemplary private sector volunteer programs, to explore ways in which governmentally funded social service programs may enhance delivery of services through effective use of volunteers and increased private support.

Planning for the establishment at ACTION of a national clearinghouse for model volunteer programs. This clearinghouse will gather and disseminate information related to the broad range and goals and techniques of volunteer programs, including methods of recruitment, fundraising, commuity relations, and organization.

Leading an interagency working group on volunteerism, to explore with other Federal agencies methods by which they can employ their resources in support of the expansion of volunteers for the delivery of social services within each agency's domain.

Assisting the President's Task Force on Private Sector Initiatives. The Director of ACTION is the sole representative of the Federal executive branch on the task force, which is mandated to discover and promote exemplary private, public/private, and volunteer models for social service delivery.

Demonstrating, through grant awards, that training of volunteers can allow nonprofit organizations and local governments to use volunteers effectively in sophisticated capacities. An example is a grant to the National Youth Work Alliance, an umbrella agency for organizations involved in addressing the problems of troubled youth. Under an ACTION grant, National Youth Work Alliance is developing, testing, and implementing a method of training personnel of shelters for runaway and homeless youth to expand their use of volutneers in all areas of management and service delivery. The training package includes assistance in developing private and local sources of financial support.

Expanding the capacity of programs which continue in categorical grant status, but at reduced funding levels. Under an interagency agreement with the Department of Health and Human Services, ACTION is placing retired senior volunteers and foster grandparents in Head Start programs, so as to allow those programs to maintain or expand the numbers of children served and to improve the quality of service.

As these examples demonstrate, ACTION is offering a wide array of technical assistance and some seed money targeted to assist in the transfer of some responsibility for social service delivery from the Federal to the State and local levels and from the public to the private sector.

QUESTIONS SUBMITTED BY SENATOR PROXMIRE

VISTA

Question. What have been the major successes and failures of the VISTA program and what lessons were learned which can be applied to other ACTION programs?

Answer. The American taxpayer has expended some $500 million on the VISTA program in just over 16 years. Unfortunately, even with this generous outlay of resources, the successes have been very limited. Indeed, in many situations, the program has actually been counterproductive.

We have attached a very small sample of evidence which leads one to conclude that a great deal of improper activity—not merely waste and abuse—was undertaken by the prior ACTION/VISTA regime.

Last, it should also be noted that the average cost of employing a VISTA volunteer is over $7,000. In addition, some 35 percent of all 12-month volunteers do not complete their full term of service.

One of the most important lessons that we can all learn from the VISTA experience is that steps must be taken by those in positions of authority to make certain that Federal tax dollars are never used to develop, maintain, and/or strengthen the political agendas of a few.

[CLERK'S NOTE.—A copy of this material is located in the subcommittee's files.]

Question. How effective has the effort been to facilitate expanded economic and social opportunities for youth and young adults?

Answer. As part of the ACTION agency's overall emphasis on dealing with the problems of troubled and disadvantaged youth and adolescents, VISTA's programing for the coming year focuses on such areas as child abuse, runaways, delinquency prevention, drug and alcohol abuse, and literacy and vocational training. Nearly two-thirds of all VISTA projects approved between July 1, 1981 and January 31, 1982, deal with the problems of youth and young adults. This represents the assignment of almost 600 VISTA volunteers, with most beginning service in the second quarter of fiscal year 1982. VISTA anticipates a substantial number of additional projects dealing with these problems will be approved during this fiscal year.

Question. As VISTA funds are reduced, what efforts are being made to transfer expertise regarding volunteerism to agencies and community groups working to carry on the volunteer effort?

Answer. One of the major premises of the VISTA program is that VISTA volunteers should be regarded only as a temporary resource to any community, transferring skills to local residents who, in turn, would carry on the activities after the VISTA's are withdrawn. This principle is reaffirmed in the VISTA Guidelines, 46 Fed. Reg. 62122, December 22, 1981, which state: "Both new and renewal VISTA projects should display evidence of local public and/or private sector support or active participation which will enhance their chance of success, as well as plans for institutionalizing the VISTA activities after the volunteers leave."

Thus, under its present leadership, VISTA is funding only those projects which have a reasonable chance of transferring sufficient skills in volunteerism and resource mobilization so that local groups can carry on efforts begun by VISTA volunteers.

FOSTER GRANDPARENT PROGRAM

Question. Please describe briefly how the foster grandparent program functions.

Answer. The foster grandparent program is unique in that it uses the grandparent concept, a social role available to the elder person. The program is a Federal effort combined with State/local public agencies and private nonprofit organizations. Founded in 1965, the foster grandparent program is designed to assist low-income elderly Americans with financial and logistical support to have them be engaged in community life. Under professional supervision, foster grandparents' placement/assignments are developed at the local level, by matching foster grandparent's interest, skills, and life experiences with the children's developmental needs.

Foster grandparents usually serve 4 hours a day, 5 days a week, for a total of 20 hours weekly and receive a stipend of $2 per hour. Projects assist with transportation and lunch expenses, and provide an annual physical examination and liability insurance. An amount equal to 90 percent of Federal funding must be distributed to volunteers as direct benefits.

ACTION grants to eligible agencies and private nonprofit organizations are on an annual basis, with the project sponsor matching at least 10 percent of the project budget with non-Federal funds. A project director hired by the project sponsor manages the project's operation. An advisory council of community volunteers advises the sponsoring agency/organization, with an annual written appraisal on the project's operation.

Question. How many older Americans participated in this program last year? How many are expected to participate during the next year?

Answer. In fiscal year 1982, there are 18,100 foster grandparents budgeted for 233 projects, the same level is estimated for fiscal year 1983.

Question. How many children were served by the program last year and how many are expected to be served during the next year?

Answer. On a daily basis, foster grandparents assist an average of 3 children each, or approximately 54,000 children on a given day. Many of the children may be helped year-round or during most of the year; others may be helped for weeks or up to 3 months. The kinds of development, treatment, care, or education plans for the individual child usually dictate the length of service with a foster grandparent under professional supervision. An estimated 150,000 children will be assisted to varying extents at the currently funded volunteer level during fiscal year 1982.

Question. Have any studies or evaluations been conducted to determine the success of this program?

Answer. A longitudinal and cross-sectional evaluation of the program on foster grandparents is underway. The initial results from baseline data show that: Foster grandparents have higher mental health functioning levels than waiting list people; although the foster grandparents were generally older than waiting list people, there was no difference in physical impairments; and there are some initial indications that foster grandparents develop a better outlook on life upon entering volunteer service than they had before joining the program.

Further analysis will enable more conclusive finding on the impact of the program on foster grandparents. Current findings indicate that the program is successful in having a positive impact on these individuals.

ACTION is curently designing two program evaluations to assess the impact of demonstration efforts on juvenile offenders.

RETIRED SENIOR VOLUNTEER PROGRAM

Question. What areas of service will be emphasized for the retired senior volunteer program during the next year?

Answer. Emphasis will be placed on the following program areas during the coming year:

Services to youth.—Older volunteers have demonstrated a knowledge and ability for making significant contributions in issues related to troubled youth. During the next year, the retired senior volunteer program will emphasize services in the areas of: Runaways; drug abuse; and literacy.

Long-term care.—Given the growing number of functionally disabled older people in the population and the rapidly increasing costs of health services, long-term care is a major opportunity for service by volunteers in the retired senior volunteer program. In communities where both senior companion and retired senior volunteers' programs exist, in cooperation with the senior companion program, retired senior volunteer program volunteers will continue to provide long-term care services for homebound elderly.

In fiscal year 1981, seven demonstration projects (five senior companion programs and two retired senior volunteer programs) were funded for a period of 2 years. This demonstration effort was designed to further our information on the impact of volunteers in the provision of services to persons in need of long-term care in their homes. Research and ongoing evaluation are part of this 2-year effort.

Inflation fighting—Retired senior volunteer program volunteers have, to date, been very successful in providing information and counseling to persons on fixed incomes and information related to energy conservation. Such efforts will be continued and expanded. Employment assistance for older people is a part of this effort.

Crime prevention.—Crime prevention activities normally sponsored by police or sheriff departments, or by divisions of the courts, provide excellent opportunities for retired senior volunteer program volunteers to contribute needed services to their community in such areas as: Vicitm/witness assistance services; organizing neighborhood crime watches; home security checks/property identification; and offender rehabilitation.

Question. To what extent are States assisting in support of program activities?

Answer. State funding support of the program in the first quarter of fiscal year 1982 was $2,194,606. This support included Governors' or State agency discretionary funds allocated on an ad hoc basis to existing ACTION-funded projects, and State funding of retired senior volunteer program-styled projects neither funded by ACTION nor State sponsored.

There are also 19 retired senior volunteer program projects currently operating in Wisconsin, Florida, Nebraska, and California that are totally supported with State funds. These projects receive technical assistance from ACTION.

Question. Do you see support by the States increasing over the next few years?

Answer. In fiscal year 1980, when data on State assistance were first collected, State funding support of the program totaled $1,315,618. This was increased in fiscal year 1981 to $2,356,420. The fiscal year 1982 first quarter total of $2,194,606 and the trend of the last two fiscal years, lead us to believe that State support will increase slightly in the next few years, or at least be maintained at approximately the level achieved in fiscal year 1981.

Question. How many volunteers are participating in the program at the present time? Will this number increase during the next year?

Answer. A reported 319,000 older Americans participated in the retired senior volunteer program during the fiscal year 1981. During the fiscal year 1982, an estimated 332,000 volunteers will be participating and by the end of fiscal year 1983, an estimated 345,000 retired people will be serving in this program.

Question. Have any studies been undertaken to determine the success of the program to date?

Answer. A national retired senior volunteer program impact survey is currently being reviewed by the Office of Management and Budget. It is designed to assess the impact of the program on the senior volunteers and the recipient local organizations or individuals.

Additional comprehensive case studies are being prepared on selected successful local projects. These case studies will become available over the next year.

The 1980 Retired Senior Volunteer Program Project Survey Final Report (released May 1981) demonstrated that the volunteers were involved in a wide range of activities serving various community and individual needs. The structure of the local projects and the program strategies they employed reflected retired senior volunteer program's organizational diversity and flexibility. Local organizations determine what services to provide and how to provide them.

Question. What is the budget breakdown for this program, particularly in terms of administrative level expense?

Answer. Following is a budget breakdown for retired senior volunteer program for fiscal year 1983:

Estimated funding level	$27,445,000
Personnel compensation: Other than full-time permanent	95,000
Personnel benefits	8,000
Travel and transportation of persons	152,000
Communications, utilities, and other rents	6,000
Printing and reproduction	176,000
Other services: Evaluation, audits, public relations	420,000
Supplies and materials	77,000
Grants	26,511,000
Administration	16,538,000
Volunteer transportation	6,562,000
Volunteer meals	1,312,000
Volunteer insurance	787,000
Volunteer recognition materials	1,312,000

DOMESTIC PROGRAMS

Question. What percentage of the agency's fiscal 1983 budget request is targeted to provide volunteer opportunities for older persons?

Answer. The amount requested in fiscal year 1983 for activity 3, older American volunteer programs, is $87,861,000, which is nearly 75 percent of the agency's total appropriation request. The percentages by program are: retired senior volunteer program, 23 percent; foster grandparent program, 41 percent; senior companion program, 10 percent.

U.S. SOLDIERS' AND AIRMEN'S HOME

STATEMENT OF GEORGE H. McKEE, GOVERNOR

ACCOMPANIED BY:
ROBERT W. HAMPTON, SECRETARY-TREASURER
ARTHUR J. CURRY, BUDGET OFFICER

SUBCOMMITTEE PROCEDURE

Senator BURDICK. For the Soldiers' and Airmen's Home, located just a few miles north of the Capitol, is Lt. Gen. George McKee, Governor of the home.

Please introduce your associates and give us a brief overview of the home's operation.

General McKEE. Good morning, Mr. Chairman.

INTRODUCTION OF ASSOCIATES

With me this morning I have Col. Robert Hampton, on my right, secretary-treasurer for the home; Mr. Arthur Curry, the home budget officer, on my left.

The home is located about 3 miles north of the Capitol. It has been there for about 131 years.

Presently the membership of the home is over some 2,000. This year's budget request is $26,718,000 for the 1983 budget.

That is the 1983 budget request, Mr. Chairman.

In the 1982 budget we had requested $23,825,000. However, we were directed to take a 4-percent reduction of that amount in our 1982 budget. That means that our home operation will be taking a cut of approximately $953,000 in our 1982 budget, which is not a great amount of money from some of the figures I have heard here this morning. But to our operation, it has a terrific impact on the programs at the home.

For the past 10 years the home has been in quite an austere mode of operation, because at one time, at least it appeared that our expenditures would be exceeding our income by 1989. That was the picture until we received the return of the article 15 dollars starting this fiscal year.

As a result of that forecast, when it became evident some 10 years ago, the home then started reducing back in their expenditures, the maintenance programs, the manning in areas where we sorely need manning today, particularly in our hospital, or the health care facility.

As I explained to the committee last year, in the previous 5 years we had voluntarily reduced our staff at the home by some 21 percent.

To get a more accurate indication as to how much we would need to restore the home's facilities to the level they should be, in view of their aged condition, we had an engineering corporation, one recommended by the Corps of Engineers, to come in and assist us. They came up with a price tag of some $48 million to restore the home to an acceptable level.

From this information, we did develop a restoration plan that we had hoped to initiate in 1983, which would bring the overall operation up to acceptable standards over the next 10 years. With the reductions we are having to take now we are going to have to mark time, causing us to manage our funds and resources not too wisely because the buildings are continuing to age, the roofs are continuing to leak, and repairs that should be made are not going to be done. Also, I have functions where I do not have the required manning to do the job for the members out there.

That's where we stand today, Mr. Chairman.

FISCAL VIABILITY

Senator BURDICK. What is the status of the Soldiers' and Airmen's Home's permanent fund? How are the funds invested? And when do you anticipate the fund to be depleted?

General McKEE. At the present time we have about $100 million in the permament fund, which is on deposit with the U.S. Treasurer. From that money we get $8^3/_8$ percent interest on the first $75 million and the going or current interest rate on the balance above $75 million.

Other sources of income for the home, in addition to the permanent fund interest, is the withholding pay from the enlisted personnel of the Army and the Air Force and warrant officers of the Army. They contribute 50 cents a month to the home, which is about $7 million a year.

Senator BURDICK. Would you bring that mike a little closer to you?

General McKEE. How's that, sir?

Senator BURDICK. Fine.

General McKEE. Did you get the first two sources of funds we were discussing, Mr. Chairman?

Senator BURDICK. I think so.

General McKEE. The third source of income that we have is courts-martial fines and forfeitures. That's about $4 million for 1981, and for 1982 that will go up to about $20 million a year. These are the funds Congress restored to the home last year. When the home was established in 1851 the law said the source of revenues to support the home would be the withholding pay from the enlisted people, they would contribute 25 cents a month out of their $7 a month paycheck they were earning in 1851. The other source of income was established as courts-martial fines and forfeitures from the enlisted personnel.

In 1963 part of the courts-martial fines and forfeitures effected by the article 15, were taken away from the home due to a decision by the Comptroller General. The Congress restored that this past year. So now we will have those funds coming back to the permanent fund again.

The fourth source of the income for the home is the users fee that the members who reside there now pay to stay there. This year it is 22½ percent of their retirement pay or VA pension. It will go up to 25 percent next year. That is the maximum that we can charge for their staying at the home.

Senator Burdick. You charge 22½ percent of what?

General McKee. Their retired pay, their VA pension, or compensation, and that amount varies according to what the individual military-type pension is for that person.

The average users fee payment by the members at this time is approximately $120 a month. That's the average.

MAINTENANCE

Senator Burdick. You mentioned repairs. Can any of those be deferred? Or will they have to be deferred, some of them?

General McKee. Well, that's what I am faced with, Mr. Chairman. To give you an example, I have a central heating plant there. We knew that we were going to have to do some repair work on one of the two chimneys. They are some 190 feet high. We had programed about $13,000 to do what we figured would have to be done. This work has been deferred for several years.

As a result of an inspection by a company which specializes in this type of repair work, now I find that I have a nondeferrable repair job in one of the two chimneys at a cost of $37,500, as soon as we can get to it. After the heating season, as soon as we can shut down one of the furnances, that particular smokestack must be repaired.

That's a result of deferred maintenance, sir. If we had gone ahead and repaired it when it should have been repaired a couple of years ago it would have cost less than $15,000. Now it is probably going to exceed $37,000, or possibly $40,000.

This is the type of thing that we are doing when we defer funding for the home, preventing us from correcting some of the maintenance deficiencies we have.

And my sitting out there, sir, as the Governor, the man who is responsible for administering this fund, and it is considered a congressional trust fund that we are responsible to you the Congress for administering, I don't feel that I am doing my job properly for you when we are required to take these across-the-board reductions, referring to the 4 percent, and forced into a situation where we are really wasting the money of the trust fund by these deferred actions.

I would like to say a further word on that, if I may, Mr. Chairman.

Last year this committee approved the $23,825,000 for our 1982 budget; the House approved the same amount. When the administration directed that we take a 12-percent reduction, I sent a letter to the Director of OMB, Mr. Stockman, explaining what the impact of this reduction would be on the home. They exempted us from that 12-percent cut. They suggested that I should work closely with your committee to insure the reduction wasn't applied to the home. We were exempted from the 12-percent reduction, so today, I'm requesting you to continue to support the amount for our 1982 budget that you approved during your 1982 budget hearings and markup.

As I said at the beginning, that cut will mean a $953,000 reduction in the fiscal year 1982 budget. If our fiscal year 1982 bill isn't passed this year, we have a supplemental that is in for fiscal year 1982 for $796,000, and I am requesting that the committee add an additional $953,000 to give us the money you approved last year, and the amount OMB has agreed to, the same amount approved by Chairman Natcher in the House.

PREPARED STATEMENT AND SUBMITTED QUESTIONS

Senator BURDICK. The staff tells me that they haven't had hearings on a supplemental on this yet, but they probably will. I understand it hasn't been sent up officially yet.

Well, thank you very much. If we think of any more questions we will write to you and you can respond to them. Your full prepared statement will be included in the record.

General MCKEE. Thank you, Mr. Chairman. We have an establishment that we are extremely proud of, although it is aged. We would like to invite you out to visit with us anytime and show you what a great place the U.S. Soldiers' and Airmen's Home is out there.

[The information follows:]

STATEMENT OF GOV. GEORGE H. MCKEE

PURPOSE

The purpose of this statement is to furnish information on the home which may be of interest during the committee's consideration of the home's fiscal year 1983 appropriation request. Included is pertinent information on the home: its mission, administration, physical plant, financing, and members. The statement also provides a general description of the fiscal year 1983 appropriation request as compared with expected fiscal year 1982 appropriations.

MISSION

The home was established by Congress in 1851 for the relief and support of retired, invalid, or disabled soldiers of the Regular Army. Membership is a benefit for former warrant officers and enlisted personnel of the Regular Army and Air Force with the following qualifications: (1) honest and faithful service for 20 years or more as warrant officers or enlisted personnel, or (2) service-connected disabilities rendering them unable to earn a livelihood, or (3) nonservice-connected disabilities rendering them unable to earn a livelihood, provided they have had service during a war. These criteria are listed in this order not as priorities, but because about 87 percent of the membership is of the first group, and about 13 percent is of the disabilities groups.

ADMINISTRATION

General supervision of the home was placed by Congress in a Board of Commissioners now composed of the Governor of the home; the Surgeon General, U.S. Army; Comptroller of the Air Force; Deputy Chief of Staff, Manpower and Personnel, U.S. Air Force; Chief of Engineers, U.S. Army; the Adjutant General, U.S. Army; the Judge Advocate General, U.S. Air Force; the Sergeant Major of the Army; and the Chief Master Sergeant of the Air Force. Subject to approval by the Secretary of the Army and the Secretary of the Air Force, the Board has authority to establish regulations for the internal direction of the home. The law provides for an annual report of inspection of the home by the Inspector General of the Army to be submitted to Congress.

PHYSICAL PLANT

The home is situated in northwest Washington D.C. Facilities include four domiciliary and three hospital buildings, a service area, a heating plant, a laundry, and some minor structures. The domiciliary capacity of the home is 2,115 beds. Our hospital has a capacity of 385 beds. Throughout the years, the loss of home lands to other activities has reduced the acreage from about 500 to the present 300. The members of the home are grateful for the support provided by committees of Congress for retention of the home's lands against past proposals to further reduce it.

FINANCING

The Act of 1851 provided that the home be supported from two principal sources: (1) a monthly contribution while on active duty of 25 cents from each enlisted member and warrant officer of the Regular Army and Air Force, and, (2) fines and forfeitures imposed upon these people be sentence of courts-martial. Public Law 94–454 increased the monthly withholding to 50 cents. Public Law 96–357 amended the Act of 1851 to also include fines and forfeitures imposed upon the aforementioned people under authority of section 815 of title 10, U.S.C., commonly referred to as nonjudicial punishment. The Act of 1883 established a permanent fund in the U.S. Treasury and provided for the payment of interest of 3 percent per annum on the fund balance. On December 15, 1973, the Act of 1883 was amended so that the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States, would set the interest rate. Under this amendment, the home is now receiving about 9 percent interest on its fund balance. Public Law 94–454, in addition, authorized the collection of a fee from the members of the home. The permanent fund balance on September 30, 1981, was $97.8 million.

MEMBERSHIP

Our male members range in age from 41 to 97, with an average age of 67. Our female members range in age from 50 to 87, with an average age of 75. There are 71 female members. Average total membership during fiscal year 1981 was 2,143, including 2,043 present. For fiscal years 1982 and 1983 the average total membership is expected to be 2,235, with about 2,140 present.

THE FISCAL YEAR 1983 BUDGET FOR OPERATION AND MAINTENANCE

The home's fiscal year 1983 operation and maintenance appropriation request at $26,718,000, is $2,297,000 greater than its expected fiscal year 1982 appropriations of $24,421,000, which includes supplementals of $753,000 and $796,000 for pay raises and program changes in fiscal year 1982. While the pay raise supplemental has yet to be transmitted to the Congress, I have been assured that it is forthcoming. Briefly, the increase for fiscal year 1983 will provide for inflation and for minimal program changes to enhance the comfort and safety of the members. A detailed description of the $2,297,000 increase is included in the home's justification booklet which has been submitted to the committee.

CONCLUSION

The members of the home appreciate the interest in their welfare that the committee has taken over the years.

QUESTION SUBMITTED BY THE SUBCOMMITTEE

Question. Please summarize the status of your fiscal year 1982 appropriation, and also of the supplemental appropriations needed for fiscal year 1982.

Answer. The current continuing resolution we are operating under provides for a 4-percent across-the-board reduction. For the home that amounts to $953,000. If the 4-percent reduction is continued in either the enacted fiscal year 1982 appropriation bill or in the continuing resolution for the remainder of fiscal year 1982, the home will need restoration of the $953,000 decrement.

The $796,000 fiscal year 1982 program supplemental before the committee, required to fund deferred maintenance and other critical supplies and projects, is needed as soon as it can be enacted. It was requested that, if restoration of the $953,000 across-the-board 4-percent reduction was necessary for the home, that amount would be added to the $796,000 for a total of $1.749 million for the program supplemental appropriation for fiscal year 1982.

The last pay raises increased our costs by $753,000. We have been told by OMB that our requirement will be included in the submission to the Congress in the spring. We have been paying employees at the higher rates. We request your favorable action on the pay raise supplemental appropriation for fiscal year 1982.

SUBCOMMITTEE RECESS

Senator **BURDICK**. The subcommittee will recess until 2 p.m. when we will meet again in this room to hear testimony from the Corporation for Public Broadcasting, the Library Commission, the Commission on Ethics in Medicine, and the Commission on Student Financial Assistance.

[Whereupon, at 9:46 a.m., Thursday, February 11, the subcommittee was recessed, to reconvene at 2 p.m. this same day.]

(AFTERNOON SESSION, 2:10 P.M., THURSDAY, FEBRUARY 11, 1982)

CORPORATION FOR PUBLIC BROADCASTING

STATEMENT OF EDWARD S. PFISTER, PRESIDENT

ACCOMPANIED BY:

SHARON P. ROCKEFELLER, CHAIRMAN, BOARD OF DIRECTORS

FRED P. WACKER, VICE PRESIDENT, ADMINISTRATION AND TREASURER

SUBCOMMITTEE PROCEDURE

Senator RUDMAN [presiding]. The subcommittee will come to order.

This afternoon we're going to continue our regular fiscal year 1983 appropriations hearings, as we have done this morning, for the Labor, Health and Human Services, and Education Subcommittee.

This afternoon we are going to hear testimony from four of the related agencies under the subcommittee's jurisdiction, The Corporation for Public Broadcasting, the National Commission on Libraries and Information Science, the President's Commission on Ethical Problems in Medicine, and the National Commission on Student Financial Assistance.

Let us begin today with testimony from Mr. Edward Pfister, who is president of the Corporation for Public Broadcasting. I understand that with you today are Fred Wacker, vice president, and Sharon Percy Rockefeller, who is chairman of the board of directors.

And I'm very pleased to welcome as a visitor to our panel today the distinguished chairman of our Foreign Relations Committee, Senator Charles Percy of Illinois, who I think may want to say something.

Senator PERCY. Yes; I would like to formally introduce Sharon Rockefeller and Edward Pfister to this committee.

When the Speaker of the House introduced you to the President of the United States he said "It's my high honor and rare privilege to introduce to you * * *" Well, it is indeed my high honor and rare privilege to introduce not only my daughter, Sharon, who is the chairman of the board of directors of the Corporation for Public Broadcasting but also Edward Pfister, the very distinguished and outstanding member of the fourth estate who did such outstanding work in television broadcasting in Texas and is the president of the Corporation for Public Broadcasting. I'm very pleased—as a friend and as a great admirer of them both—to introduce them to the committee.

Senator RUDMAN. Thank you very much. And I'd like you to come forward.

PREPARED STATEMENTS

We note that you have submitted statements. You may give the statement in full or you might give us a brief summary, whatever is your wish. We will, of course, incorporate your entire statement into the record.

[The statements follow:]

STATEMENTS OF EDWARD J. PFISTER

Mr. Chairman, members of the Subcommittee, on behalf of the Corporation for Public Broadcasting, I appreciate this opportunity to appear before you in support of the Corporation's appropriation for Fiscal Year 1985, and to share with you our views concerning the Administration's rescission request for Fiscal Year 1983.

Initially appropriated at $172 million, the CPB FY 1983 appropriation was subsequently reduced to $137 million as a result of a rescission request made by the Administration in the last fiscal year. A further rescission of the FY 1983 CPB appropriation is now being proposed at $116.5 million.

Further, the status of our Fiscal Year 1984 appropriation, contained in the omnibus continuing resolution, signed by the President last December 15 and in effect until March 31, remains uncertain. Unless and until the Congress passes regular appropriations bills to restore the full $130 million authorized for CPB in FY 1984 and voted as the CPB appropriation by this Subcommittee; or unless the Congress increases CPB's funding in a subsequent continuing resolution, the Corporation will be forced to try to support the public broadcasting system at a disastrously low level of $105.6 million -- a reduction of nearly 40 percent from current levels, well below the cuts that most other programs have been asked to sustain.

BACKGROUND

We are at the point, as we come before you today, of having to pose the pivotal question of survival. We must ask you, your colleagues and the American people, as we have been asking ourselves: Does this nation want to continue to have a public broadcasting system? I believe there is overwhelming evidence that it does.

The technological explosion in telecommunications has nothing to do with our survival. Rather, it has created a "dream" for greater diversity of video, audio and digital services. As the software market is developing, however, particularly in video, reality and the dream seem destined to be services apart.

Indeed, the economics of tiered subscription services and advertising seem to be driving the cable software market toward a complement of services similar to the commercial formats available on radio. On cable, it appears that the clear winning formats will be a range of movies and sports and some public affairs.

These developments, coupled with the nonavailability of cable to 75 percent of the country and the expenses of these additional services, underscore rather than undercut the continued need for a vigorous public broadcasting service.

In the past year, public broadcasters have gained substantial experience in seeking new sources of nonfederal revenue. What we have learned is that while some of these activities may pay dividends, in no instance will they make up for revenues beyond a certain level. And we are at that level now.

The essential element, then, to the continued survival of public broadcasting is stable, predictable and adequate federal support. Although it has never exceeded 30 percent of the industry's total income, federal support is the cornerstone of public broadcasting's financial foundation. The federal commitment CPB receives and invests in public broadcasting has made possible this national medium of excellence. It is our firm belief, and one shared by our viewers and listeners, that the federal commitment and CPB's stewardship continue to be one of the soundest uses of our national treasury, both in terms of purpose and in accomplishment. We urge you to move to preserve this institution that works so well and is so widely accessible to the American public.

Today, because of high inflation, diminishing resources and rising costs, public broadcasting faces a crisis. This is no longer a projected crisis. Already, at current appropriations levels, public broadcasters throughout the country have been forced to retrench, to cut back on services and production and, in a frightening number of instances, to close down operations. At lower levels, we see this becoming the trend rather than isolated examples. Mr. Chairman, public broadcasting has come to the final notch in its belt; we cannot tighten it further.

CPB'S FUNDING MECHANISM

Since 1975, successive Congresses and Administrations have endorsed the concept of multi-year authorizations and two-year advanced appropriations as a finely balanced mechanism for permitting a predictable and stable funding base for program planning purposes, and for providing insulation from undue influence from whatever sources that might result from continuous exposure to the federal budget and appropriations process.

Threat Raised by Current Budget Process

Despite recent Congressional reaffirmation of the advance-year funding principle, the mechanism is seriously jeopardized. The current budgetary process has destroyed the concept of financial stability for CPB and forces the Corporation to return to the uncertain, hand-to-mouth existence that long-range funding was intended to eliminate. For example, CPB should have known the amount of its Fiscal Year 1984 appropriation on October 1, 1981 (the beginning of FY 1982), two years in advance of the start of FY 1984. But public broadcasters do not yet know this figure. It is entirely possible that if the appropriations bill that encompasses the Corporation's funding is not passed this year (as it was not passed last year), CPB will not know the amount available to it for FY 1984 until September 30 of this year.

Planning Needs

More distressing still, even after September 30, 1982, CPB cannot be certain about the amount available because the Administration could propose a rescission of CPB's FY 1984 appropriation at any time during FY 1983, right up to the time these funds are dispensed to CPB from the Treasury. Such rescission proposals have occurred in past years. Under these circumstances, it is clear that any long-term planning is difficult at best. The nature of the broadcasting enterprise is that it must meet certain embedded costs to sustain operations. Further, it must commit programming dollars in advance of the upcoming seasons, and it must show its contributors evidence that they are investing in an activity that will continue to exist. The advanced federal dollars play the critical role in each of these activities. Yet, the concept of financial stability has very little meaning in an environment where the funds available to public broadcasting fluctuate several times before a given fiscal year.

Clearly, as I have noted earlier, the need for public broadcasting and the infinite variety of program services it makes available to all our citizens has in no way diminished. Already during the PBS broadcast season, which began last month and is being hailed as one of our best, an estimated 60 percent of all American television households -- blue collar and professional, wealthy and not wealthy, urban and rural -- watched at least three hours of public television per week. Each month, more than 72 percent of all TV households watch some public television. Last spring, more than seven million people tuned in to a public radio station during the average survey week -- a 40 percent increase of the public radio listenership of only two years ago.

As public broadcasting enters a period of explosive change in technological development in telecommunications, the next few years are critical for this institution. Fiscal Years 1983 through 1985 must be years in which the quality and diversity of services offered by public broadcasting to the American people continue.

Even with $130 million appropriated for FY 85, it will be difficult for stations to expand their services via nonbroadcast and other new technologies to rural, sparsely populated, underserved areas of the nation. Seed monies for experimentation and expansion of services in two-way broadcast and cable, translator systems and further exploitation of our advanced satellite distribution system will be curtailed or eliminated altogether. Moreover, the Administration's proposal to eliminate the facilities program at NTIA will further compound these development problems.

Fiscal Years 1983 through 1985 will become years when these and other investments in the advanced technologies -- locally and nationally -- will not materialize, when broadcast hours will be substantially reduced, when local public radio and television stations will shut down.

Much is said about the new technologies, about cable television, pay TV and direct broadcast satellite methods of delivering specialized programming to target audiences. While these new delivery systems may hold much promise, none of them is even close to universal usage. Moreover, the existing arts and cultural services have gotten off to a slow start, but a start nonetheless. One reason for this is that they are rooted in the commercial rather than the public service domain. Public broadcasting has proven its ability to provide these services to all Americans. Its efforts should not be thwarted by lack of adequate financing, nor by the assumption that the commercial sector will take over this arena.

Public Support

Today's public broadcasting community consists of 296 television transmitters operated by 157 licensees, and 243 radio transmitters, licensed to 212 entities. Together, these independent, locally controlled stations provide television service to approximately 91 percent of the nation, and radio service to approximately 68 percent of the nation. Linked by an advanced satellite interconnection system, public radio and television are ideally situated to take advantage of the new technologies with the proper leadership, direction and financial support.

Our sources of income are diverse, but the federal portion is essential for stimulating these sources. In 1980, 65 percent of public broadcasting's income came from federal, state and local tax-based sources; the remaining 35 percent came from subscribers, businesses and foundations. In 1980, subscribers contributed $84.8 million to their local public TV and radio stations. The Administration tells us that the federal cuts can be made up from foundations and corporations. But this simply is not possible, not at the magnitude of funds needed.

Principles of Funding Mechanism

Mr. Chairman, I would like now to address the principles involved in the Corporation's funding mechanism -- insulation, predictability and planning.

The Public Broadcasting Amendments Act of 1981 provided authorized support levels for the Corporation for Fiscal Years

1984 through 1986 of $130 million each year. In doing so, the Congress and the Administration retained the principle of advance-year funding for public broadcasting. We are requesting an appropriation of $130 million for FY 1985, the full amount authorized. This will be more than matched with the necessary nonfederal financial support ($260 million) that the system generates from other sources.

- Insulation provides necessary protection for public broadcasting from pressures that may occur through the annual budget and appropriations process in reaction to the broadcast of unpopular programming. While these pressures may be unintended, undeniably they raise public broadcasters' sensitivities to the political winds -- particularly where critical funding decisions lay unresolved. This clearly is not the situation the Congress wished to create. Insulation and First Amendment protections are critical, fundamental to our existence.

Yet, as I have already noted, the principle of advanced funding is being eroded by rescission requests and requests to lower previous requests. The Adminstration's rescission request for FY 1983 would reduce the already appropriated $137 million to $116.5 million, a cut of $20.5 million. The FY 1983 amount of $137 million already represents earlier cuts by rescission action of the Congress last year from an appropriation of $172 million. In addition to the problems I cited earlier, we have serious legal questions as to whether a Presidential rescission request of funds appropriated two years ago is in accord with the provisions of the Budget Impoundment and Control Act of 1974.[1]

In its more than 14 years of existence, the Corporation for Public Broadcasting has sought renewal of authorizations eight times and appropriations 14 times. It has been under continuing resolution funding for a total of 56 months, and has suffered four vetoes, three of which were of Labor/HEW appropriation bills not directly related to public broadcasting.

With repeated budget amendments and rescission requests from the Administration to reduce funds already appropriated, the principle of advance-year funding has become a charade. Two-year advanced appropriations and multi-year authorizations contribute much to eliminating both the risk and the appearance of government interference with and control of public broadcasting.

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[1] See attached CPB Memorandum of Law, Annex I.

The 1967 Carnegie Commission report, Public Television: A Program for Action, identified the two concepts that are fundamental to the preservation of basic First Amendment rights to freedom of speech and of the press: organizational independence and financial independence for public broadcasting. The second concept -- financial independence -- has never been realized, but it clearly relates to the first. Carnegie said: "The Commission cannot favor the ordinary budgeting and appropriation procedure followed by the government in providing support from general funds. We believe those procedures are not consonant with the degree of independence essential to public broadcasting."

While the Congress attempted to follow this guidance in the Public Broadcasting Act of 1975, when two-year advanced appropriations for public broadcasting became law, the appropriations and budget processes in the 1980s have unwittingly overturned the will of the Congress on this fundamental issue.

The principle of insulation is further eroded through demands to replace losses in federal support through so-called "entrepreneurial" or "commercial" ventures by public broadcasting.

The proposed exploration of certain commercial ventures by public broadcasting will lead us into the marketplace in a different, even damaging way. We simply must not permit public broadcasting to drift into commercialism. Such a fundamental change could alter the way we produce and choose programming. The pressure to deliver audiences to advertisers would make it impossible for us to serve all our publics. Public broadcasting should not become an endangered species. We can experiment, we will seek new revenue resources, but never at the risk of losing what we have and what we are.

- Predictability allows both CPB and the stations to anticipate a stable level of funding over a period of time in order to provide adequately for the development of programs and services.

Predictability affects two areas. The first is the ongoing, operational nature of broadcasting -- the "real-time" service that stations render to their communities. Unlike many government programs and activities, public broadcasting stations have no time to reflect on changes. They must broadcast -- they must produce, schedule and air programs systematically.

The second area is the stations' ability to generate non-federal funding support. The severe reductions in federal support to public broadcasting will seriously weaken or in some cases completely destroy our ability to find or acquire other revenues. Public broadcasters are directing more of their energies to finding alternative funding, but dramatic reductions of predictable federal support will weaken their efforts.

- Planning allows CPB and the stations to make long-term commitments that are essential to the production of high-quality programming.

The heart of public broadcasting is programming of high quality, diversity and of sufficient quantity to be responsive to the needs and interests of the American public. To accomplish that goal, public broadcasters must have sufficient lead time to plan, gather and commit program production funds. Moreover, the Corporation, through its Program Fund, must be assured of sufficient resources to support new programming for the future.

CURRENT STATUS OF CPB'S AUTHORIZATION AND APPROPRIATION

The Public Broadcasting Amendments Act, which authorizes $130 million for CPB in FY 1985, also sets specific allocations for distribution of CPB's appropriation for the 1984-1986 time frame. They can be summarized as follows:[2]

- Approximately 62 percent of the appropriation must be allocated to the stations in the form of unrestricted grants used primarily for programming. This is roughly the same percentage applied at present.
- Approximately 28 percent of the appropriation must be applied to support the production and acquisition of public

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[2] See attached table, Annex II.

television and radio programs for national distribution. This compares to approximately 24 percent at present.

- Six percent of the appropriation must be applied to the financing of certain systemwide fixed costs -- radio and television interconnection, satellite financing and music royalty fees. Recognizing that the total of these costs would exceed six percent, the legislation created a mechanism whereby the public TV and radio stations would assume any excess costs above the six percent that CPB is required to allocate.
- The remaining four percent is available for CPB to apply to engineering and audience research, education, training and management activities.

CPB'S FUNDING PRIORITIES FOR FY 1985

The Corporation's request for FY 1985 of $130 million reflects the priorities contained in the 1981 Act.

Television Direct Support

For television, CPB would allocate $65.9 million for direct station grants, which we call Community Service Grants (CSGs). This amounts to a 26 percent reduction in CSGs from the current level. At the same time, CPB anticipates that the number of television stations qualified to receive CSGs will increase by ten percent. Thus, the three factors of reduced funding levels, growth in the number of stations and inflation will reduce dramatically the average grant received by public television stations. For example, in FY 1982, the CSG for KNME-TV in Albuquerque, New Mexico, is approximately $402,000. It is already scheduled to be reduced in FY 1983 to approximately $313,000. Even at the CPB request of $130 million for FY 1985, this grant will be reduced to $255,000. In the case of WHYY in Philadelphia, Pennsylvania, the comparable figures would be $918,000 for FY 1982, $718,000 for FY 1983, to $519,000 for FY 1985. Cuts of this magnitude will erode both local and national program production. Already KCET-TV in Los Angeles has announced that it will no longer be able to produce national programs on the scale of Cosmos. With fewer federal dollars, national program buys will be curtailed. This means that the stations' purchasing power for programs such as Sesame Street, Wall Street Week and Great Performances will be dangerously diluted.

With respect to support for national television program production, the FY 1985 allocation will be $21.9 million, about $1 million below the FY 1982 level. Given the increasing cost and demand for high-quality public television programs, CPB will focus its priorities on support for new programs or series of programs rather than support for existing programs. While this will address some of the unmet needs of the system, it will create an additional burden on the stations to seek outside financial support to continue worthwhile programs. What this means for viewers is that some of the outstanding programs on public television that CPB has supported -- programs such as American Playhouse, The Lawmakers, Cosmos, Nova, and 3-2-1 Contact -- will no longer have the assurance of CPB funding and could very well disappear.

With fewer programs, we will lose audiences and, consequently, viewer contributions.

Radio Direct Support

For radio, the CPB allocation for CSGs would decrease by approximately 17 percent. During this same period, the number of qualified radio stations eligible to receive CSGs is expected to increase by more than 33 percent. What this means is that by FY 1985 the average radio CSG would decrease between 15 to 20 percent. Given the fact that radio is even more labor-intensive than television, there is the likelihood of severe station cutbacks. The very existence of some of these stations will be threatened under these allocations.

For example, station KTDB-FM in Ramah, New Mexico, receives an FY 1982 Community Service Grant of $45,000. At the CPB request of $130 million, this CSG will drop to $31,000. The current CSG for KBPS-AM in Portland, Oregon, is $106,000; at the $130 million appropriation level, it will fall to $56,000. WHA-AM in Madison, Wisconsin, a major producing station, will plummet from its current CSG of $236,000 to $111,000.

The CPB support for national radio program production is accomplished under contract with National Public Radio (NPR).

This support will decrease by at least three percent in 1985 under the terms of the 1981 Act and probably more, given both CPB's and NPR's common position that the stations should receive the highest funding priority. The result of a funding decrease at NPR would be an inevitable reduction in the number of hours of originally produced programming, like All Things Considered and Morning Edition. This comes in the face of a dramatic increase in the audience for NPR and could have a very damaging effect.

Payment of Fixed Costs

Rising costs are a fact of life. The fixed costs of the public broadcasting enterprise -- satellite financing, music royalty fees and interconnection facilities and operations -- will increase.

The Corporation is required by the 1981 Act to allocate six percent of its appropriation for these costs.

- As principal developer of the $60.7 million satellite interconnection system for public radio and television, CPB was left with a $24.1 million deficit.
- Under the 1976 Copyright Act, public broadcasting stations are liable for music royalty fees. And CPB has paid over $8 million in fees. New agreements have to be reached in calendar year 1983, which could result in substantially larger payments.
- The 1981 Act stipulates that CPB must pay 50 percent of the interconnection facilities and operating costs. These are related principally to the lease costs of transponder space on WESTAR satellites and the operating and maintenance costs of the PBS and NPR main operating terminal and technical centers.

In recognition of the fact that these costs might exceed the six percent that CPB is required to allocate, the 1981 Act created a "trigger" mechanism whereby the public television and radio stations would assume any costs above that six percent.

In FY 1982, the total fixed costs were $15.1 million. Our request for FY 1985 is $7.8 million. There is considerable likelihood that the "trigger" mechanism will have to be activated. This will add to the stations' own operating costs and significantly reduce their ability to operate at current levels.

Other Services

The remainder of the appropriation is to be applied to activities that CPB has undertaken to provide information, technical assistance, training and related services to public broadcasting and the public.

These include educational and instructional support. As you know, CPB has been providing funds for educational and instructional programming, ancillary materials, technical assistance and research since 1975. In 1981, CPB received a restricted, 15-year, $150 million gift from The Annenberg School of Communications. These funds are specifically earmarked to assist in the development of course materials for degree programs in higher education. As part of its commitment to this project, CPB has agreed to maintain its level of spending in the area of education at the FY 1981 level ($2.3 million).

We are currently making a strong effort in planning, engineering and audience research and evaluation to focus attention that will attract outside income sources. Funding cuts in future years will make it more difficult, if not impossible, to use this small amount as seed money to stimulate ideas and activities beneficial to public broadcasting.

We will continue to fulfill our responsibilities under the law in the areas of equal employment opportunity and affirmative action and in the training of women and minorities, as a commitment to diversity and upward mobility.

The Administration's proposed budget would require cuts of such a magnitude as to raise serious questions as to the ability of CPB to meet its statutory requirements.

IMPACT OF THE ADMINISTRATION'S PROPOSAL

The Administration's proposal for FY 1985 of $85 million is catastrophic. In overall perspective, the Administration's proposal will amount to more than a 50 percent reduction from FY 1982 levels in all categories of CPB support. Such a drastic reduction will destroy the financial base upon which the American public broadcasting institution has stood, and from which it has been nurtured and has grown over the past decade and a half. The numbers graphically portray the crisis that is before us.

- For television CSGs, the Administration proposes a decrease of 52 percent from the current level. For the average CSG, this would mean a reduction of almost 55 percent.
- For radio CSGs, the Administration proposes a reduction of 46 percent from the current level. This will amount to approximately a 48 percent reduction in the average CSG.
- For television program production, the Administration proposes a 36 percent reduction in the funds available. This would give CPB approximately the same dollar amount that it had in 1977.
- In radio program production, the proposed reduction would be 38 percent, which would provide funds roughly equal to what NPR spends at present on news and information programming alone.
- In terms of the fixed expenses of satellite financing, music royalty fees and interconnection costs, the Administration's proposal would reduce the funds available by 66 percent -- two-thirds. These costs do not disappear just because the amount of funds available are reduced. A ripple effect will occur whereby CPB will have to reevaluate its financing plan for eliminating the debt incurred for the Satellite Interconnection System, and it will inevitably mean that the stations will have to assume an even greater share of these costs as provided in the "trigger" mechanism.
- With respect to CPB's funds for research, education, training and management, the Administration's proposal would cut these funds by almost three-quarters. It is clear that CPB would not be able to perform many of its duties and responsibilities, as outlined in the statute and as encouraged by the Congress at this level.

In summary, the request of the Administration calls into question the continued existence of CPB and more importantly of the stations that it seeks to nurture and support. Most tragic of all, however, is the elimination of high-quality, informative and well-received programming services to the American people.

FY 1983 RESCISSION

The Administration's rescission request for FY 1983 will further reduce the already appropriated $137 million by another $20.4 million -- or a total cut of $55.4 million from the original $172 million appropriation. This proposal, if enacted, would fully destroy the concept of two-year advanced funding the Congress itself so carefully constructed in 1975 and, indeed, would mean not even one year of advanced funding.

We urge the Subcommittee not to tamper with the advanced funding mechanism, which provides insulation from possible pressure through the annual budget and appropriations process, and provides a degree of predictability and stability that is vital to public broadcasting for program planning and provides the ability to secure financial credit to attract new revenues and meet unanticipated costs.

There is also a practical problem of reducing CPB support to more than 500 public radio and television stations less than six months before many of them start their own 1983 fiscal year. A large number of public stations operate on a July 1-June 30 fiscal year. Reductions in the Corporation's support in the form of Community Service Grants would have immediate and damaging effects on local station operations.

The Corporation and the public television stations have already made commitments to apply FY 1983 appropriation monies to several cooperative program efforts, namely to a new weekly documentary series to which CPB has committed $5 million, and the American Playhouse series, which has already received critical acclaim. Any reduction of these funds endangers these projects.

We believe -- indeed, we know -- that the American public's interests in public broadcasting will be severely undermined by rescission of the Corporation's FY 1983 appropriation. Therefore, it should be rejected by this Subcommittee and by the Congress.

An FY 1983 rescission of $20.5 million would curtail all of the Corporation's program areas. The most obvious at the local station level would be in the Community Service Grants that CPB makes available to individual stations for a variety of operational needs. The other major area would be CPB's funding of high-quality radio and television programs for national distribution, such as NPR's All Things Considered and Morning Edition, and television's American Playhouse, Oye Willie, Media Probes, With Ossie and Ruby, and other new series and specials.

- Television

  Under the proposed rescission, Community Service Grants for public television would drop from $68.5 million to $58.2 million, a $10.3 million decrease. This reduction would adversely affect the level of services television stations provide to their communities.

  Program production support from CPB would drop by almost 20 percent -- from $18.1 million to $14.5 million. This would result in a substantial reduction in corporate support to existing television programs as well as any new programming.

- Radio

  For public radio, support would decrease by 20 percent at the same time that the number of radio stations eligible to receive CPB support (CSGs) is increasing by 15 percent. Community Service Grants would decline from $13.8 million to $11 million. National Public Radio would be forced to reduce the number of hours of programming that it makes available to radio stations by $1.6 million, from $12.1 million to $10.5 million.

- Other Services

  Research, training, technical assistance, management and other activities would decline by nearly $2 million. This includes program-related research, engineering research, training and development, aid to minorities, women and other underrepresented groups. At the present time, less than five percent of the CPB appropriation by law goes to administrative costs. Since 1977, allocations to this area have increased less than one percent. As you are well aware, this level does not begin to approach the pace of inflation. Further reductions are scheduled to comply with reduced funding for 1983 and beyond. Any added reductions would compel significant reductions in support and the Corporation's ability to do those jobs that Congress itself has asked us to do.

CONCLUSIONS

The goals of the Public Broadcasting Financing Act of 1975 to insulate public broadcasting from political pressures and to facilitate long-term planning by public broadcasting entities cannot be met within the framework of the current budgetary cycle. The long-range funding mechanism was set up precisely to avoid public broadcasting's being subjected to pressures that might naturally result from the annual budgeting and appropriations process. As long as CPB is involved in the current budgetary process, it is obvious that political pressures pose an ever-present threat to the independence and stability of public broadcasting.

The American people have made a multi-million dollar investment in public broadcasting. We face a fundamental test: Does the Congress really want public broadcasting to survive? I believe the American people do. Does the Congress, reflecting the public, want a public broadcasting alternative to its commercial counterpart? That is, a strong, diverse, independent and alternative broadcasting service for all the American people.

APPENDIX I

APPLICABILITY OF CERTAIN PROVISIONS OF THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974 TO THE CORPORATION FOR PUBLIC BROADCASTING

This memorandum will discuss the applicability to the Corporation for Public Broadcasting of the impoundment control provisions of the Congressional Budget and Impoundment Control Act of 1974, P.L. 93-334; 88 Stat. 297 (the impoundment control provisions appear at 31 U.S.C.A. 1400 et seq.)

I. BACKGROUND

Rescission constitutes the repeal or alteration of an existing budget authority. Rescission requires a determination by the President that "all or part of any budget authority will not be required to carry out the full objectives or scope of programs for which it is provided" or that "such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorized projects ...)." 31 U.S.C.A. 1402 (a).

The Congressional Budget and Impoundment Control Act of 1974 ("Impoundment Control Act") requires that the President make a formal rescission proposal to the Congress and provides that the rescission becomes effective only if the Congress acts favorably on that proposal within 45 days. 31 U.S.C.A. 1402(a) and (b).

For the reasons discussed in this memorandum, the Impoundment Control Act does not permit rescission of amounts appropriated to the Corporation for Public Broadcasting pursuant to the Public Broadcasting Act of 1967, as amended, 47 U.S.C.A. 396, 396(k) and the relevant appropriation acts, e.g. P.L. 96-38.

II. RESCISSION AND THE PUBLIC BROADCASTING FUND ESTABLISHED PURSUANT TO THE PUBLIC BROADCASTING ACT OF 1967, AS AMENDED

The Impoundment Control Act of 1974 does not permit the rescission of amounts appropriated to the Public Broadcasting Fund:

A. The Impoundment Control Act does not permit rescission when other provisions of law require outlays (spending). The Public Broadcasting Act of 1967, as amended by The Public Telecommunications Financing Act of 1978 ("The Financing Act") requires disbursement of amounts appropriated to the Public Broadcasting Fund.

The Impoundment Control Act of 1974 was adopted to reclaim Congressional prerogatives in the establishment of priorities for Government programs and Government spending from the Executive Branch. It was not an Act designed to expand Presidential powers over Congressionally-endorsed Government expenditures, but to reduce them again to constitutional proportions. A superficial reading of the Impoundment Control Act might lead to the incorrect conclusion that all "appropriations" are potentially subject to rescission.

To the contrary, Congress in creating a statutory discipline within which the Chief Executive must operate when he believes good reasons exist for rescission or deferral of "budget authority", carefully drafted the Impoundment Control Act to restrict the application of its rescission and deferral provisions to only those situations in which expenditures were authorized and an appropriation made for them. To permit the President any rescission or deferral power in instances where Congress had required expenditures and appropriated for them would have given the President more, rather than less, "clout" over prerogatives the Congress wished to retain for itself. Thus, the Impoundment Control Act begins with a significant disclaimer:

> Nothing contained in this Act, or in any amendments made by this Act, shall be construed as --
>
> (1) asserting or conceding the constitutional powers or limitations of either the Congress or the President;
>
> (2) ratifying or improving any impoundment heretofore or hereafter executed or approved by the President or any other Federal officer or employee, except insofar as pursuant to statutory authority then in effect;
>
> (3) affecting in any way the claims or defences of any party to litigation concerning any impoundment; or
>
> (4) superseding any provision of law which requires the obligation of budget authority or the making of outlays thereunder.
> 31 U.S.C. 1400 (emphasis added).

The Public Telecommunications Financing Act does both of the things described in paragraph (4) of the disclaimer: it requires the obligaton of budget authority and it requires the making of outlays pursuant to budget authority:

> "Financing; Open Meetings and Financial Records
>
> "(k)(1)(A) There is hereby established in the Treasury a fund which shall be known as the Public Broadcasting Fund (hereinafter in this subsection referred to as the 'Fund'), to be administered by the Secretary of the Treasury.
>
> * * * *
>
> "(C) There is authorized to be appropriated to the Fund for each of the fiscal years 1981, 1982, and 1983, an amount equal to 50 percent of the total amount of non-Federal financial support received by public broadcasting entities during the fiscal year second preceding each such fiscal year, except that the amount so appropriated shall not exceed

> $180,000,000 for fiscal year 1981, $200,000,000 for fiscal year 1982, and $220,000,000 for fiscal year 1983.
>
> "(D) Funds appropriated under this subsection shall remain available until expended.
>
> "(2)(A) . . . The Corporation shall determine the amount of non-Federal financial support received by public broadcasting entities during each of the fiscal years referred to in paragraph (1) for the purpose of determining the amount of each authorization, and shall certify such amount to the Secretary of the Treasury, . . .". Upon receipt of such certification, the Secretary of the Treasury shall make available to the Corporation, from such funds as may be appropriated to the Fund, the amount authorized for each of the fiscal years pursuant to the provisions of this subsection.
>
> "(B)" Funds appropriated and made available under this subsection shall be disbursed by the Secretary of the Treasury on a quarterly basis, in such amounts as the Corporation certifies will be necessary to meet its financial obligations in the succeeding quarter. 47 USC 396(k) as amended by Section 307, Public Telecommunications Financing Act of 1978, Pub. L. 95-567; 92 Stat. 2415, 2416. (emphasis added).

The quoted portions of Section 396(k) clearly provide that amounts appropriated to the Fund are obligated to the Corporation, or stated otherwise, that the Secretary is required to make outlays from the Fund upon the Corporation's certification. The legislative history of the subsection is equally clear:

> [Section 396(k)] stated that the funds shall be disbursed by the Secretary of the Treasury on a quarterly basis, in such amounts as the Corporation certifies will be necesary to meet its financial obligations in the succeeding quarter. Nothing contained in this paragraph should be construed as giving the Secretary of the Treasury any authority to oversee the Corporation or its quarterly certification of fiscal needs. The Treasury's role is intended to remain limited to disbursement of funds in accordance with the corporation's quarterly certification. H. Rep. 95-1178, 95th Congress, 2d Sess., p. 26. (emphasis added).

Without intending in any way to disparage the prudent business practices of the Corporation,

> or to suggest that the Department of the Treasury should in any fashion exercise review powers over the amounts withdrawn from the Fund by the Corporation, it is the view of the Committee that a more orderly, yet flexible, system of disbursement of these funds is necessary to assure proper management of Federally appropriated funds. Accordingly, S.2883, as reported, provides that the Corporation may withdraw funds from the Fund on a quarterly basis to meet its cash needs for the succeeding quarter. Section 306 of the bill directs the Secretary of the Treasury to disburse to the Corporation such amounts as the Corporation estimates to be its spending requirements for the next three months. Under no circumstances should the Secretary of the Treasury review, disapprove, or modify the amount certified by the Corporation. S. Rep. 95-858, 95th Cong., 2d Sess., pp. 14-15. (emphasis added).
>
> The section is also amended to require that funds appropriated to CPB must be disbursed by the Secretary of the Treasury on a quarterly basis, in such amounts as the Corporation certifies will be necessary to meets its financial obligations in the succeeding quarter. Ibid., p. 30. (emphasis added).

By its own terms, therefore, the Impoundment Control Act of 1974, does not support rescission of any amount appropriated to the Public Broadcasting Fund in FY 1982 or any other year.

B. "Rescission" would compromise the stability, freedom, and independence Congress provided public broadcasting in the Public Telecommunications Financing Act.

From the very first, Congress and the Executive Branch have recognized that "long-range funding" of public broadcasting is a requirement if its Constitutional freedoms are to be protected. That recognition extends throughout the legislative history of the Financing Act and its predecessors. As President Ford noted in transmitting the legislative proposal that resulted in the first long range funding act for public broadcasting:

> A recurring question in public broadcasting has been how to reconcile Government funding with the possibility of Government control. On the one hand, if Federal funds are used to support public broadcasting, the Government must be able to evaluate how the funds are spent. To do otherwise would be irresponsible. On the other hand, strict accountability by public broadcasting to the Government can lead to Government direction of programming, which is contrary to the principles of free expression on which our Nation was founded. It is this issue alone which requires that the Congress consider a five-year appropriation for public broadcasting.
>
> This bill is a constructive approach to the sensitive relationship between Federal funding and freedom of expression. It would eliminate the scrutiny of programming that could be associated with the normal budgetary and appropriations processes of the Government. At the same time, it would still permit periodic review of public broadcasting by the Congress. I believe that it will assure the independence of noncommercial radio and television programming for our Nation; and, long-term Federal funding will add stability to the financing of public broadcasting which may enhance the quality of its programming. I urge the Congress to enact it promptly.
> Statement by the President, Gerald R. Ford, February 13, 1975. (emphasis added).

The long range funding concept was reaffirmed in legislation in 1978. President Carter commented in his transmittal:

> I am transmitting to the Congress today proposals to strengthen our public broadcasting system and *to insulate it from political manipulation*.
>
> The bill I am submitting with this message continues and increases long-term Federal funding for public television and radio. *Financial stability is needed if public broadcasting is to provide better programs for more citizens and protect those programs from political pressures*.
>
> *These changes will also increase public broadcasting's insulation from inappropriate political influence*. Other amendments will give it greater journalistic independence. I want to encourage public broadcasters at all levels to engage in active news reporting and public affairs programming. Message to Congress, Jimmy Carter, October 6, 1977. This message appears in H. Rep. 95-1178, 95th Cong. 2d Sess., 3-11. (emphasis added).
>
> The Committee believes that *the practice of multi-year authorizations established in 1975, combined with forward funding*, serves as a valuable mechnism for long-range planning by those charged with planning for the development of, and distributing Federal funds in support of, noncommercial educational and cultural radio and television programming. *Likewise this practice lends an important element of stability to those who receive Federal funds*. *In addition to assisting in the planning process, advance year authorizations and forward funding serve as a necessary insulation from extraneous political and other inappropriate interference with the operations and programming of individual entities engaged in program development and dissemination*.
> S. Rep. 95-858, 95th Cong., 2d Sess., pp. 5-6. (1978)

III. SUMMARY AND CONCLUSION

The rescission and deferral provisions of the Congressional Budget and Impoundment Control Act of 1974 are not applicable to the funds that the Secretary of the Treasury of the United States must disburse to CPB pursuant to the Public Telecommunications Financing Act of 1978 and appropriations pursuant to that Act.

APPENDIX II

OBLIGATIONS BY PROGRAM
(in millions)

						1985 CPB Req.		1985 Pres. Budget	
Summary of Expenses	1982 Estimate	1983 Estimate	1983 Requested Revision	1984 Estimate	1984 Requested Revision	$130M Est.	Inc. (Dec.)	$85M Est.	Inc. (Dec.)
Television:									
Community Service Grants	$ 89.5	$ 68.5	$ 58.2	$ 65.9	$ 47.4	$ 65.9	-	$ 43.0	$(4.4)
Program Production	22.8	18.1	14.5	21.9	15.8	21.9	-	14.4	(1.4)
Subtotal TV	$112.3	$ 86.6	$ 72.7	$ 87.8	$ 63.2	$ 87.8	-	$ 57.4	$(5.8)
Radio:									
Community Service Grants	$ 17.7	$ 13.8	$ 11.1	$ 14.6 1/	$ 10.5 1/	$ 14.6 1/	-	$ 9.5 1/	$(1.0)
Program Production	15.1	12.1	10.5	14.6 2/	10.5 2/	14.6 2/	-	9.5 2/	(1.0)
Subtotal Radio	$ 32.8	$ 25.9	$ 21.6	$ 29.2	$ 21.0	$ 29.2	-	$ 19.1 3/	$(1.9) 3/
CPB:									
System "Fixed Expenses":									
Satellite Financing	$ 4.5	$ 2.7	$ 2.7	(	(	(	(	(	(
Music Royalty Fees	3.0	3.3	3.3	(	(	(	(	(	(
Interconnection Facilities and Operations	7.6	7.1	6.7	(	(	(	(	(	(
Subtotal	$ 15.1	$ 13.1	$ 12.7	$ 7.8	$ 5.6	$ 7.8	-	$ 5.1	$ (.5)
Other Expenses:									
Research, Ed., Trng., Other	$ 3.8	$ 4.9	$ 4.0	(	(	(	(	(	(
Administration and Contingency	8.0	6.5	5.5	(	(	(	(	(	(
Subtotal	$ 11.8	$ 11.4	$ 9.5	$ 5.2	$ 3.7	$ 5.2	-	$ 3.4	$ (.3)
Subtotal CPB	$ 26.9	24.5	22.2	13.0	9.3	13.0	-	8.5	(.8)
TOTAL	$172.0	$137.0	$116.5	$130.0	$ 93.5	$130.0	-	$ 85.0	$(8.5)

1/ Statutory minimum under Public Broadcasting Amendments Act of 1981

2/ Statutory maximum under Public Broadcasting Amendments Act of 1981

3/ Does not add due to rounding

Mr. Chairman, Members of the Subcommittee, you have already received a prepared statement. At this time, then, with your permission, I should like to give you my own brief comments.

First, let me assure you that public broadcasting is no longer a house divided. We are united in bringing you one message: An adequate federal share of support for public broadcasting is essential for our survival. Advance-year funding and what it was designed to accomplish -- First Amendment protections and the critical ability to plan -- are severely threatened. The very existence of public broadcasting is in real danger.

I come before this Subcommittee today to reassert an axiom: The federal government must continue to be a partner in public broadcasting. In Fiscal Year 1980, total federal support of public broadcasting represented 27.3 percent of its total income, and for the past ten years, the federal portion has averaged 24 percent.

This federal contribution to public broadcasting remains crucial. It has consistently and demonstrably been the bridge between mediocrity and the excellence that the American people wanted when public broadcasting was created and upon which they have come to rely.

From the beginning, public broadcasting has demonstrated that it has the capacity to help earn its way. It relies on its own local communities and its own performance for much of its support. In 1980, for example, nonfederal income was $512.3 million, 72 percent of our total income. But even the most optimistic projections of nonfederal revenues -- new and traditional -- fall short of fundamental system needs in the absence of certain predictable levels of federal support.

Our sources of nonfederal funds are growing. And we have spent considerable time and effort to broaden the funding base, particularly over the last few years. What we have learned is that there are limited revenue opportunities, that -- with risk -- could yield some revenues in four to five years. But for the next three years we are totally dependent on direct local support to make up the difference between reduced federal funds and rising costs. The limitations of these efforts and opportunities are beginning to make themselves clear. We are stretching hard just to make up the impending $35 million reduction and high inflation for FY 1983, not to mention the $32 million reduction and inevitable inflation costs the following year.

Therefore, it is critical that the FY 1985 appropriation not drop below $130 million. Federal funding below $130 million will severely jeopardize CPB's ability to maintain current services for public radio and television.

Unlike most recipients of federal funds, CPB must maintain an operating system of stations with certain embedded costs. Even at the $130 million level, we at the Corporation for Public Broadcasting will have enormous difficulty in meeting the costs associated with essential station activities. At $130 million, CPB's ability to fund high-quality national programming falls well below the amounts needed to maintain and sustain anything equivalent to our current effort. Further, our direct support to the stations slips to dangerously low levels. Some stations, particularly in those states with financial difficulties, will be forced off the air. In states like Ohio, Michigan and Oregon, there are already serious problems.

At $130 million, total CSGs for television will drop from $89.5 million this year to $65.9 million in 1985; for public radio stations, CSGs drop from $17.7 million to $14.6 million.

Permit me to give you some examples.

- Television

At the current level of $172 million, three public television stations in New Mexico this year will receive approximately $1 million in Community Service Grants. But at the 1985 level of $85 million that the Administration requests, those same stations together will receive only $401,000. For four TV stations in Alaska, CSGs will drop from $1.2 million to $505,000; for Hawaii, $500,000 to $173,480; for Oregon, $657,000 to

$277,000; for Pennsylvania's seven TV stations, $5 million will drop to $1.5 million.

- Radio

Three public radio stations in New Mexico receive $132,000 in FY 1982 Community Service Grants. At the Administration's request of $85 million for FY 1985, this will drop to $77,000. The current CSG for seven radio stations in Oregon total $423,000; at the $85 million level, it falls to $187,000. The effect on individual stations is exemplified by WHA-AM in Madison, Wisconsin, a major producing station, whose CSG will plummet from its current level of $236,000 to $38,000.

What these figures mean, Mr. Chairman, is that we are likely to lose some stations in a number of local communities -- often in those communities that need public broadcasting services most.

This dramatic reduction in the Corporation's direct support to the stations will force them to reduce or curtail services and production of programming. With fewer programs, they will lose audiences and, consequently, viewer and listener contributions. Coupled with rising inflation and costs, it is clear that these losses will signal the beginning of the end of public broadcasting, despite our current aggressive efforts to locate new nonfederal funds.

With the federal cuts proposed, national programming will suffer as well. Already, KCET-TV in Los Angeles, a major producer for the public television system, has announced that it will no longer be able to produce national programs on the scale of Cosmos. With fewer federal dollars, national program buys will be curtailed. Other national PTV producing stations are wrestling with similar difficulties. This means that the stations' purchasing power for programs such as Sesame Street, Wall Street Week and Great Performances will be dangerously diluted. For radio, this reduction will spell the end to many local news programs and the contraction of NPR's news and public affairs.

Reductions in federal support will seriously hamper our activity in the technological arena. At $130 million appropriated for FY 1985, it will be difficult to survive, much less broaden services via nonbroadcast and other new technologies to rural, sparsely populated, underserved areas of the nation. Seed monies will not be available for experimentation and expansion of services to cable and translator systems. The Administration's proposal to eliminate the facilities program at NTIA will further compound these development problems.

With this as background, let me return to why advanced federal support is essential to the enterprise we call public broadcasting. First, federal support represents a stable, predictable base of income on which to plan for the future. Second, it provides a stimulus for additional sources of funding from the private sector. The Corporation has consistently used its funds in this fashion in the form of challenge grants, incentive grants and other mechanisms designed to stimulate and encourage private sector support. Without equity available to offer lending institutions, public broadcasting has needed the two-year advanced appropriations to obtain loans or a line of credit.

We are now told that if public broadcasting audiences want to continue to listen and to watch, they must come up with the funding themselves, and if they fail and the stations go out of business, that loss will affect only a handful of the American public, the so-called elite. The charge of elitism is a myth.

Almost 73 percent of all American homes with television sets watch some public television programming. One-fifth had incomes of less than $10,000. Twenty-six percent of those households were headed by someone with less than four years of high school; 21 percent were college graduates. More than seven million listeners tune to public radio every week. These statistics show that Americans from all walks of life rely on public broadcasting as a source of entertainment and information.

The Administration has repeatedly urged the private sector -- including corporations which now give $2.7 billion a year to philanthropic causes -- to increase charitable contributions as government spending is reduced. They will not make up the loss of federal sources. A recent survey of 427 major corporations shows that only six percent plan to increase their giving in response to the federal budget cuts.

In 1980, public broadcasting received slightly more than $72 million, about 10 percent of its income, from business and industry. That is even less than public broadcasting received from its subscribers.

The Congress, in the 1981 Act, has urged us "to seek to identify funding options which also will ensure that public telecommunications as a source of alternative and diverse programming will be maintained and enhanced, and that public telecommunications services will continue to expand and be available to increasing numbers of citizens throughout the nation."

Mr. Chairman, this we are doing most energetically.

But without a stable, predictable and adequate base of funding -- which can come only from the federal government -- public broadcasting lacks even the basic equity that is essential to stimulate, to encourage, to seek out those alternative funding options.

The proposed exploration of certain commercial ventures by public broadcasting will lead us into the marketplace in a different, perhaps damaging way. We simply must not permit public broadcasting to drift into commercialism. Public broadcasting was created to serve all of the people, it cannot become another commercial network. Such a fundamental change could alter the way we produce and choose programming. The pressure to deliver audiences to advertisers would make it increasingly difficult for us to serve the very publics we were designed to serve. Public broadcasting should not become an endangered species. We can experiment, we will seek new revenue resources, but we must not in the process risk what we have and what we are.

The federal contribution must be predictable, and it must be protected from political influence and whimsy. Public broadcasters -- and past Administrations and Congresses -- have worked long and hard to establish a stable, long-range funding mechanism. But the current budgetary process has compromised that mechanism. The erosion of long-range funding is a clear and present danger to our financial well-being, to our ability to plan and to our First Amendment protections. Despite the Congress' reaffirmation last year of the advanced-funding principle, this principle has become an endangered species. We urge the Congress to restore it both in principle and in fact.

I ask you to recognize with us the critical nature of adequate federal support and its insulated, long-term status.

The federal commitment that CPB receives and invests in public broadcasting has made it possible for this service to move from adequacy to excellence. That federal commitment is, and will always be, one of the soundest uses of our national treasury, both in terms of purpose and accomplishment.

It must be what it has always been -- part of the fundamental foundation of public broadcasting's financial resources.

STATEMENT OF SHARON P. ROCKEFELLER

Mr. Chairman, Members of the Subcommittee, I am pleased to have this opportunity to appear before you. I urge that you approve the full $130 million appropriation for CPB for Fiscal Year 1985. I also urge that you not rescind our FY 1983 appropriation of $137 million.

The reductions proposed for public broadcasting far exceed our fair share of the general budget reductions. We have already "tightened our belts" severely. The proposed 40 percent reduction in the FY 1985 appropriation will starve public broadcasting.

As Chairman of the Board of Directors of the Corporation for Public Broadcasting, I represent the American public today.

- 150 million Americans watch public television every week
- 7 million Americans listen to public radio every week, an increase of 40 percent since last year

- 12,000 Americans serve on station advisory or governing Boards
- 170,000 Americans volunteer their time to their local stations.

Throughout the country, people from every walk of life depend on public broadcasting for education and information. We provide the only thought-provoking programming for children. The richest country on earth must be able to afford Sesame Street, Mr. Rogers, The Electric Company and 3-2-1 Contact. Thirty percent of all PTV program hours are devoted to educational and instructional programs for children.

More people will watch the 36 Shakespeare plays on public TV than cumulatively have seen them in theaters throughout the world during the last 400 years. The most important American educational institution is not the elementary school, nor the secondary school, nor colleges and universities -- it is public broadcasting.

Some argue that if an institution, like our own, cannot pay its way in the marketplace, then it has not economic justification. If it has no economic justification, then it has no social justification. That is nonsense.

I reject this argument out of hand. Some of the most cherished nonprofit, educational institutions in our society -- our schools, universities, libraries and museums -- do not and have never passed the so-called "box office" test. The fate of public broadcasting is at stake. It is in the national interest that we not only survive, but that we thrive, improve and grow.

Without adequate federal support, CPB cannot help fund programs like radio's All Things Considered and Morning Edition or TV's The Lawmakers, Cosmos, American Playhouse, Nova and Oye Willie. The CPB dollars act as leverage, as an incentive, as the "Good Housekeeping Seal of Approval" by which other sources of funding are secured.

Ninety percent of the CPB appropriation goes directly to our 500 stations for their operations and to purchase programs. The "business" of public broadcasting is programming. The public cares and knows of us because of our high-quality, intelligent programs, which are uninterrupted by commercials. We need adequate federal support to maintain our standards of excellence and service.

Public broadcasting is trapped in a "catch-22" dilemma. The loss of Bill Moyers to CBS is a good example. Without sufficient funds, we lose our best programs. Without fine programs, we shall lose our audience. If we lose our audience, we shall lose their loyalty, their commitment and their membership contributions. Without their contributions, we cannot produce or purchase excellent programs. Sufficient funds are the key element in assuring that we do not get caught in this vicious, downward spiral.

We cannot lose weekend programming. We cannot sacrifice children's or local programming. We cannot cut down to 12-hour-per-day broadcast schedules. We cannot allow ten or more stations to go off the air. We cannot divert too much of our senior management's energy toward finding relatively small amounts of money. If we do, we shall be squandering resources, time and talent that really belong in the creative arena. After losing Bill Moyers, we absolutely cannot afford to lose MacNeil and Lehrer.

Mr. Chairman and Members of Congress, we must have adequate federal support to survive.

BIOGRAPHICAL SKETCHES

EDWARD J. PFISTER

PRESIDENT

Edward J. Pfister, former president and general manager of public stations KERA-TV/FM, Dallas/Fort Worth, was elected president of the Corporation for Public Broadcasting (CPB) in September 1981, during the annual meeting of the CPB Board of Directors.

Pfister had been with the Public Communications Foundation for North Texas, licensee of the Dallas stations, since 1976. Prior to joining KERA-TV/FM, Pfister served as executive assistant to Ralph Rogers, chairman of the Board of Directors of the Public Broadcasting Service (PBS), Washington, D.C., from 1973 to 1975, and was responsible for a variety of national policy and administrative functions with particular emphasis on public participation in public broadcasting.

Pfister also served as director of the PBS Chairmen's Coordinating Committee from 1972 to 1973. He was involved in coordinating staff and board-level negotiations between the Corporation for Public Broadcasting and the various national public television agencies.

He also served as director of public relations and information services for the National Association of Educational Broadcasters (NAEB) in Washington, D.C., from 1970 to 1972, and from 1965 to 1970 was director of information services and assistant to the executive director of the National Instructional Television Center (now the Agency for Instructional Television) in Bloomington, Indiana. Pfister was manager of information services and a writer and editor for the National Educational Television and Radio Center (NET) in New York City from 1960 to 1965.

Pfister has served on task forces on minority issues and public participation in public broadcasting for CPB and has participated in international delegations for coproduction and the exchange of public broadcasting progamming and information. He also has worked on various PBS task forces and study groups, notably the Task Force on Interconnection, and has served on the PBS Finance Committee. At the time of his election as CPB president, Pfister was chairman of the NAEB Public Television Managers' Council and was immediate past chairman of the Southern Educational Communications Association (SECA).

A former teacher and newspaperman, Pfister taught English at Valley Central High School, Walden, New York, and English and Latin at Brownson School, Hackensack, New Jersey, and was a political reporter for the Reno Evening Gazette and a general assignment reporter for The Record in Hackensack.

A native of New York City, Pfister holds an M.A. in Professional Education from Seton Hall University, Orange, New Jersey, and a B.A. in Literature and Philosophy from St. Peter's College, Jersey City.

# # #

FRED P. WACKER

VICE PRESIDENT, ADMINISTRATION AND TREASURER

Fred P. Wacker, a native of Washington, D.C., joined the Corporation for Public Broadcasting (CPB) as vice president, administration and treasurer, March 5, 1980.

Wacker attended the District of Columbia public schools, graduating from Western High School in 1944, and then served with the U.S. Army as an infantryman. After his discharge in February 1946, Wacker attended American University and was graduated magna cum laude with a B.A. in Economics in 1950. He also holds an M.A. in Financial Management from George Washington University.

After brief periods of service with the General Accounting Office and the Department of Commerce, Wacker joined the Department of the Navy as a management intern in 1951.

From 1951 to 1956, Wacker worked as an accountant and a budget analyst for the Navy's Bureau of Supplies and Accounts. In 1956, he transferred to the Office of the Navy Comptroller, where he served as a budget analyst until 1962.

In 1962, Wacker joined the Office of the Assistant Secretary of Defense (Comptroller), where he was assigned to the procurement directorate in the budget office. In 1966, he was appointed director of procurement.

Wacker was appointed to the position of deputy comptroller for program/budget in September 1971, and was selected to be deputy assistant secretary of defense (program/budget) in June 1973. In November 1975, he was appointed as principal deputy assistant secretary of defense (comptroller).

On July 29, 1976, Wacker was nominated by President Ford to be assistant secretary of defense (comptroller). He was confirmed by the Senate on August 6, 1976, and sworn in on September 2, 1976. He served in that capacity until his retirement from government service on February 29, 1980.

# # #

SHARON PERCY ROCKEFELLER

CHAIRMAN, CPB BOARD

Sharon Percy Rockefeller of Charleston, West Virginia, has been a member of the Board of Directors of the Corporation for Public Broadcasting since October 1977. She was elected chairman of the Board of Directors in September 1981, after serving as vice chairman since September 1980. She also has served as chairman of the Board's Planning and Legislation Committee, and chairman of the Education Committee.

Before her nomination to the CPB Board, she served on the national Board of Directors of the Greater Washington Educational Telecommunications Association, licensee of public stations WETA-TV and WETA-FM in Washington, D.C. She now serves on the West Virginia Educational Broadcasting Authority.

Rockefeller is active in national and community affairs. Some national Boards of Directors on which she also serves include Stanford University, the National Women's Political Caucus, the Women's Campaign Fund and the International Council for the Museum of Modern Art in New York City. She is national co-chair of ERAmerica and serves on the Rockefeller Management Corporation. She is a former Board member for the Day Care and Child Development Council of America and for Operation Crossroads Africa.

She also serves on the Advisory Council of the West Virginia Commission on Women and the Board of the West Virginia Foundation for the Humanities. In 1968, she founded Mountain Artisans, an antipoverty business that promotes the skills of low-income West Virginia women. In addition, she serves as chairman of Sunrise, Inc., Charleston's cultural complex, and on the Community Relations Council of the Charleston Job Corps.

In addition to a B.A. degree in French Literature from Stanford, she holds an honorary Doctor of Laws from the University of Charleston; an honorary Doctor of Public Services from Alderson-Broaddus College, Phillipi, West Virginia; an honorary Doctor of Laws from Beloit College, Beloit, Wisconsin; and an honorary Doctor of Humane Letters, West Liberty State College, West Liberty, West Virginia.

She is married to West Virginia Governor John D. Rockefeller IV and is the daughter of Senator Charles H. Percy. She is the mother of four children: John, 12; Valerie, 10; Charles, 8; and Justin, 2.

REINTRODUCTION

Senator RUDMAN. Would you like to proceed.

Mr. PFISTER. Thank you, Senator.

I should like to begin by introducing, again, Sharon Rockefeller, who is our chairman. And I should like to ask Sharon if she would like to make a brief opening statement. And I should like to follow that with a summary statement, sir.

Senator RUDMAN. Fine.

Ms. ROCKEFELLER. Thank you very much.

Mr. Chairman, members of the subcommittee, members of other committees, I'm pleased to have this opportunity to appear before you.

Before I begin I'd like to introduce our vice chairman, Mr. Jose Rivera, sitting right behind us, and Mr. Charles Roll, who is also a member of the board of directors of the Corporation for Public Broadcasting.

I urge that you approve the full $130 million appropriation for CPB for fiscal year 1985. I also urge that you not rescind our 1983 appropriation of $137 million. If this appropriation is rescinded, both the principal and the actual fact of advanced year funding for public broadcasting will be destroyed.

The proposed reductions of 40 percent far exceed our fair share of the general budget reductions. Public broadcasting is right now tightening its belt, but we have come to the final notch. We cannot tighten it any further.

As chairman of the board of directors of CPB, I represent today the vast American public; 150 million Americans watch public television every single week; 7.2 million Americans listen to public radio every single week, a 40-percent increase since last year; 12,000 Americans serve on station advisory or governing boards; and 170,000 Americans choose to volunteer their time to their local stations.

Throughout the country, people from every walk of life depend on public broadcasting for their education and information. We provide the only remaining thought-provoking programing for children on American television, other than cartoons. The richest country on Earth must be able to afford Sesame Street, Mr. Rogers, The Electric Company, and 3-2-1 Contact.

As the mother of four young children, I am personally extremely grateful to public broadcasting for these excellent programs. Of all PTV program hours, 30 percent are devoted to educational and instructional programs for children.

More people will have watched the 36 Shakespeare plays currently being shown on public television than have ever seen them in theaters throughout the world during the 400 years since Shakespeare's death.

The most important and far-reaching American educational institution is not our elementary schools, nor our high schools, nor the colleges, nor the universities; it is public broadcasting, because everyone has access to it.

An old college fundraising maxim seems particularly timely and appropriate to me today. It goes like this: "If you think that education is expensive, just try ignorance." I think that we must heed this warning today.

Some argue—and it's fashionable now—to say that if an institution like our own cannot pay its way in the marketplace then it has no economic justification. If it has no economic justification, then it has no social justification. This is utter nonsense. I reject this argument out of hand.

Some of the most cherished nonprofit educational institutions in our society, schools, universities, libraries, and museums, do not, have never, and never will be able to pass the so-called break-even or box office test. The fate of public broadcasting is at stake. It's a strong statement, but I believe it thoroughly. It is in the national interest that we not merely survive, but that we thrive, improve, and grow.

Without adequate Federal support CPB cannot help fund programs like radio's All Things Considered and Morning Edition, or TV's MacNeil-Lehrer Report, The Lawmakers, Cosmos, American Playhouse, Nova, The Kennedy Center Tonight, Up and Coming, and Oye Willie. The CPB dollars—the Federal dollars, in other words—act as leverage, as an incentive, and as the Good Housekeeping Seal of Approval by which other sources of funding are secured.

Ninety-five percent of the appropriation goes directly to our 539 stations across the United States for their operations and to purchase programs. The business that we're in is the programing business. The public knows of and cares for us only because of our high-quality, intelligent programs, which are uninterrupted by commercials. We need adequate Federal support to maintain our standards of excellence and service.

We now find ourselves trapped in a catch-22 dilemma. I'll explain this to you, and the loss of Bill Moyers to CBS is a good example. Without sufficient funds we lose our best programs. Without fine programs we shall lose our audience. If we lose our audience we shall lose their loyalty, their commitment, and their membership contributions. Without their contributions we cannot produce or purchase excellent programs. Sufficient support from the Federal Government is the key element in assuring that we do not get caught up in this vicious downward spiral.

We can't lose weekend programing. We can't sacrifice local or children's programing. We can't cut down to 12-hour-per-day broadcast schedules. We can't allow 10 or more stations to go off the air this year. We can't divert the majority of our senior management's time and energy toward finding relatively small amounts of money. If we do, we shall be squandering knowledge, resources, and talent that really belong in the creative arena. After Bill Moyers, we absolutely cannot afford to lose MacNeil and Lehrer next.

Mr. Chairman, we must have substantial Federal support to survive.

Thank you very much.

Senator RUDMAN. Thank you very much. And, of course, we all thank you for your very distinguished public service. It's not an easy task, and one you take voluntarily. We appreciate it.

Mr. Pfister.

Mr. PFISTER. Mr. Chairman, members of the subcommittee, having submitted my formal statement, I would like to summarize that statement briefly. And I would like to just try to add to what Mrs. Rockefeller has shared with you.

I am here today to assert that the Federal Government simply must continue to be a meaningful part in public broadcasting and its development in this Nation. In fiscal year 1980, total Federal support of public broadcasting represented 27.3 percent of the institution's total income, and for the past 10 years the Federal portion has averaged 24 percent.

This Federal contribution to public broadcasting remains crucial. It has consistently and demonstrably been the bridge between mediocrity and the excellence which the American people sought when they established public broadcasting.

From the beginning, public broadcasting has demonstrated that it has the capacity to help in a very major way earn its way. It relies on its own local communities and its own performance for much of its support. In 1980, for example, non-Federal income was $512.3 million, 72 percent of the institution's total revenues. But even the most optimistic projections of non-Federal revenues, new and traditional, fall far short of fundamental system needs in the absence of certain predictable levels of Federal support.

Our sources of non-Federal funds are growing. And we have spent considerable time and effort to broaden our funding base, particularly over these past few years. What we have learned is that though there are limited revenue opportunities, the risk and the yield will be modest, even in 4 to 5 years.

For the next 3 years we are totally dependent on direct local support to make up the difference between these reduced Federal funds and rising costs. The limits of these efforts and opportunities are beginning to make themselves clear. This entire institution is stretching hard just to make up the impending $35 million reduction and projected inflation rate for fiscal year 1983, not to mention the additional $32 million reduction and inevitable inflation costs in 1984.

Therefore, it is critical that the 1985 appropriation not drop below $130 million. Federal funding below that mark will severely jeopardize this Corporation's ability to maintain current services for public radio and public television alike.

Unlike most recipients of Federal funds, CPB must maintain or help to maintain an operating system of stations with certain fixed costs. Even at the $130 million level, we at the Corporation will have enormous difficulty in meeting the costs associated with essential station activities. At $130 million, CPB's ability to fund high-quality national programing falls well below the amounts needed to maintain and sustain anything equivalent to our current efforts.

Further, our direct support to the stations slips to dangerously low levels. Some stations, particularly in those States with financial difficulties, will be forced off the air. In States like Ohio, Michigan, and Oregon, there are already serious problems developing.

At $130 million, total unrestricted grants from the Corporation for television will drop from $89.5 million this year to $65.9 million in 1985. For public radio stations those grants will drop from $17.7 to $14.6 million.

Permit me to be more specific: At the current level of $172 million, three public television stations in New Mexico this year will receive approximately $1 million in community service grants. At the 1985 level of $85 million, which the administration is requesting, those same stations together will receive only $401,000.

For four television stations in the State of Alaska, grants will drop from $1.2 million to $505,000; for the State of Hawaii, $500,000 to $173,000; for the State of Oregon, $657,000 to $277,000; for Pennsylvania's seven stations, $5 million will become $1.5 million; and in New Hampshire, the decrease will be from $456,000 to $161,000.

Three public radio stations in New Mexico now receive $132,000 in 1982 community service grants. At the administration's request level of $85 million for fiscal year 1985, these grants will drop to $77,000. The current level for seven radio stations in Oregon totals $423,000. At the $85 million level, those grants will fall to $187,000.

The effect on individual stations is perhaps best exemplified by WHA in Madison, Wis., a major producing station for the national radio system, whose grant will plummet from its current level of $236,000 to $38,000.

Finally, in New Hampshire, our direct support of public radio will decrease from $133,500 to $26,000.

What those figures mean, Mr. Chairman, is that we are likely to lose some stations in a number of local communities, often in those communities which need public broadcasting services the most. And at $85 million, we are also going to cause major dislocation in larger producing stations on which the entire system of television and radio depend.

This dramatic reduction in the Corporation's direct support to the stations will force them to reduce or curtail services and production of programing. With fewer programs, as Mrs. Rockefeller has noted, they will lose audiences, and consequently, viewer and listener contributions. Coupled with rising inflation and costs, it is clear that these losses will signal the beginning of the end of public broadcasting as we know it today, and as we have been developing it for nearly 15 years.

With the Federal cuts proposed, national programing will suffer as well. With fewer dollars, national program purchases will be severely curtailed. National production entities and stations will be wrestling with significant difficulties. This means that the stations' purchasing power for outstanding programs now in place and for programs being planned will be dangerously diluted.

For radio, this reduction could spell the end to many local news programs and the contraction of national public radio's news and public affairs efforts.

Reductions in Federal support will seriously hamper all of our activities in the technological arena. Even at the $130 million level authorized for fiscal year 1985, it will be difficult to survive, much less broaden services via nonbroadcast and other new technologies to rural, sparsely populated, underserved areas of our Nation.

Seed moneys will no longer be available for this corporation for experimentation and expansion of services to cable and translator systems. The administration's proposal to eliminate the facilities program at NTIA will further compound all of these technological development problems.

With this as background, let me return to why advanced Federal support is absolutely essential to the enterprise we call public broadcasting.

First, Federal support represents a stable, predictable base of income on which to plan for the future. Second, it provides a stimulus for additional sources of funding from the private sector. The Corporation has consistently used its funds in this fashion in the form of challenge grants, incentive grants, and other mechanisms designed to stimulate and encourage private sector support.

We are now told that if public broadcasting audiences want to continue to listen and to watch, they must supply the funding themselves. And if they fail and the stations, indeed, do go out of business, the loss will affect only a handful of the American public, the so-called elite. The charge of elitism is a myth.

Almost 73 percent of all American homes with television sets watch some public television programing. One-fifth of those people had incomes of less than $10,000 annually; 26 percent of those households were headed by someone with less than 4 years of high school; and 21 percent were college graduates.

More than 7 million listeners tune to public radio every week. These statistics show that Americans from all walks of life now rely on public broadcasting as a source of entertainment and information.

The administration has repeatedly urged the private sector—including corporations, which now give $2.7 billion a year to philanthropic causes—to increase charitable contributions as Government spending is reduced. They will not make up the loss of Federal sources. A recent survey of 427 major corporations shows that only 6 percent plan to increase their giving in response to Federal budget cuts.

In 1980, public broadcasting received slightly more than $72 million, about 10 percent of its income, from business and industry. Though that is a marvelous and very much appreciated commitment, it is less than public broadcasting receives from the 3 million people who voluntarily support it now.

The Congress, in the 1981 act, urged us to seek as many sources of alternative income and alternative programing as we possibly could. Mr. Chairman, we are doing this as energetically as we can. But without a stable, predictable and adequate base of funding—which can come only from the Federal Government—public broadcasting lacks even the basic equity, the basic leverage, that is essential to stimulate, to encourage, to seek out those alternative options.

The proposed exploration of certain commercial ventures by public broadcasting will lead us into the marketplace in a different and perhaps damaging way. We simply must not permit public broadcasting to drift into commercialism. Such a fundamental change would alter the way we produce and choose our programs. The pressure to deliver audiences to advertisers would make it increasingly difficult to serve the very publics we are designed to serve. We will seek new revenue sources, we promise you that, but we must not in the process risk what we have been developing for these many years.

Public broadcasters, together with past administrations and Congresses, have worked long and hard to establish a stable, long-range funding mechanism. But the current budgetary process has compromised that mechanism. The erosion of long-range funding is a clear and present danger to our financial well-being, to our ability to plan, and to our first amendment protections.

Despite the congressional reaffirmation last year of the advanced-funding principle, this principle is now in danger. We urge the Congress to restore it, both in principle and in fact.

I ask you to recognize with us the critical nature of adequate Federal support and its insulated, long-term status.

The Federal commitment that CPB receives and invests in public broadcasting has made it possible for this service to move from adequacy to excellence. In the past 10 years or so, with your help and your understanding, this Nation has put in place a broadcasting enterprise unique in all the world. Because of your commitment and the commitment of millions of other Americans, we now have in place a public television system which can reach 90 percent of our people, a radio system which can reach 68 percent, two effective national operating organizations, the National Public Radio Service and the Public Broadcasting Service, the world's most remarkable domestic satellite system, the most open broadcast institution in the Western world, and perhaps most important of all, program services which are now competitive with any being produced or developed anywhere in terms of quality and excellence.

How ironic that public broadcasting is reaching these long-sought high levels of fulfillment just as it is seriously threatened by cuts in Federal participation. You have helped this Nation reach its height in public broadcasting, and today we are here to ask you to continue that commitment at at least $130 million.

Thank you.

Senator RUDMAN. Thank you very much, Mr. Pfister.

I think you have answered in your summary a number of questions that we had. I have just several, and hopefully we'll be able to have these questions answered in the next 9½ or 10 minutes, in which case you'll be able to leave and I'll be able to go and vote without having to hold you up.

Mr. PFISTER. I'll keep that in mind, sir.

Senator RUDMAN. There's a rollcall vote which is coming up in about 8 to 10 minutes.

A question on your Public Law 97-35. As you know, that is the one in which the excess costs exceed 60 percent, certain fixed costs exceed 60 percent. I'll bet you have a formula in which you pick them up.

What are you doing with that? How are you dealing with it? Have you talked to your licensees out there?

Mr. PFISTER. We are working with the licensees. We are working very hard to arrange our future. We're 3 years away from having to make those commitments; so 2 years away from a time when we should comfortably be locking them in.

Both the radio and the television licensees and the Corporation are working together, and we all have in our minds the same goal. That is to say, we must find a way to guarantee a stable and permanent licensee system. Without that, there is just no need for anything else. That's our delivery system. That's the goal, and we are talking and working very hard.

Senator RUDMAN. Second, there has been a recent report that National Public Radio has been discussing a takeover of UPI under a number of various proposals for various reasons. Can you tell us anything about that at this time?

Mr. PFISTER. I'll be pleased to tell you what I know.

National Public Radio, like everyone inside of this public broadcasting institution, is scrambling as energetically and as aggressively as possible to find ways to cover gaps and to continue the same high level of service we now have. I believe that National Public Radio's negotiations with UPI are continuing, but have been somewhat altered and restrained.

I can't tell you what the outcome of those negotiations are, but I am not very positive or optimistic about them.

Senator RUDMAN. Are you personally involved in those negotiations?

Mr. PFISTER. No, we are not; NPR is an independent organization.

Senator RUDMAN. Let me simply say to you that in anything of that sort there are some serious dangers. While taking over a commercial operation might look good on paper, at some point it's going to create substantial lawsuits which would really cause some problems. We'll talk to them about that.

A personal question, a question of a personal nature, in the sense that you addressed my State. I never quite understood how New Hampshire got a public radio station this past year with funding of $133,000, knowing what was known at the time, that in the coming year there was an excellent chance that it would drop down to—I think your figure today was $26,000.

Are licensees made aware of what the future trends are, because it was known at that time and puts them into a terrible position.

Mr. PFISTER. We are working, and have been working since we were first made aware of the Federal decision in this area, with our licensees to keep them fully informed and to make certain that they are trying their level best to adjust to what seems to be coming. So the station in Concord is aware and does know that our support is going to be greatly restricted. That station and stations like it across the country and this Corporation, are now working very hard to find ways to fill the gap. But they do know, sir.

Senator RUDMAN. I asked the question because, knowing the State as I know it, with a fall-off of the budget level from $133,000 to $26,000, it's very difficult in a State like New Hampshire for them to make it up. That indicates to me there's a high chance a number of these things will be forced to close.

Mr. PFISTER. Areas like that, where we do not have major urban centers, major industrial locations, or major foundations at work—those stations trouble us a great deal.

Senator RUDMAN. Senator Percy, would you care to ask any questions? We do have a rollcall in approximately 5 or 6 minutes.

Senator PERCY. I would like to make just one statement, Mr. Chairman—and I speak more as a former businessman than as a public official. And I think the staff might also want to address any comments. I will speak on the floor on this, as I have in the past.

I am amazed when I look at the projected figures for the nine public radio stations and the five television stations in Illinois and compare them with our private sector, whose budgets are increasing dramatically. As we are inundated with commercials, with freedom from restrictions, there is no place to which people can turn if they want to get away from it—except to public broadcasting.

And when we consider that this investment in public broadcasting services 8.5 million people in Illinois, 150 million people across the country, and provides some of the best educational and high-quality programing available today, the investment seems modest indeed. Let's compare these budgets and then look at the quality of what's done.

Until 1960, there wasn't a single public-service prime night time show on television in the United States of America. Public broadcasting, by setting the pace, has been a symbol and has proven that good programing pays—so much so that commercial stations are stealing programing from the Corporation of Public Broadcasting.

If we just try to keep our eye on how much we're getting for the dollars we spend, I don't think there's a member of this subcommittee who would ever spend money more wisely than in this field. And I feel very deeply and very strongly about that.

Commercial stations traditionally have supported the existence of public broadcasting. I don't know anyone that's against it. But we'll just let it die if we don't find funds for it.

Most would agree that the investment is well warranted and will pay off handsomely for the American people. And I think we'll hear strong protests from across the country when people see what happens when quality broadcasting goes out on both public radio and public TV.

Senator RUDMAN. Thank you very much, Senator Percy.

SUBMITTED QUESTIONS

We have a number of questions which we will submit for the record. You have answered most of the questions we thought we would discuss today in your statements. We thank you very much for your appearance.

I would only add to what my friend from Illinois has said by saying that I believe that in this body there is substantial support for programing, and I would expect the issue will be brought to everyone's attention by a number of voices in upcoming months.

Senator PERCY. I will certainly commit also to talk to David Stockman again about it. He is sympathetic to this. And we're sympathetic to his problems also. But I just think it would be absolutely foolish for us to really degrade the quality of this for so small an amount, just literally a very small amount, considering the impact it has. Where can we spend money that will benefit 150 million people?

Senator RUDMAN. Thank you very much.

We will now stand in recess for about 10 minutes, so we can vote. And you can now leave and we won't have to hold you up. Thank you very much.

Mr. PFISTER. Thank you very much, Senator.

[A brief recess was taken.]

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

BOARD OF DIRECTORS

Senator Proxmire: While Corporation Board members do not receive salaries, they do collect a fee for every day they are engaged in Corporation-related business. In the past, this fee was $100 a day along with full reimbursement for all travel and hotel expenses. In fiscal 1980 the 15-member Board charged $184,948 to the Corporation for these expenses. This averages out to more than $12,000 per Board member.

Why can't the Board's activities be accomplished more cost-effectively through the teleconference format?

Answer: First, it is important to note that the expense for Board activities has dropped by 20 percent from 1977. This is in absolute dollars. Taking inflation into account, particularly the rise in air fares, the reduction would be much greater.

Second, the CPB Board has, on occasion, made use of telephone meetings to handle business. They are not, however, the most productive way to handle a wide ranging agenda which would last several hours.

With respect to satellite teleconferencing, the fact that there would be such a small group of people participating mitigates against the economics of utilizing this technology. The advantage of satellite teleconferencing becomes much greater when dealing with large groups of people. Also, two-way interactive teleconferencing is more expensive than one-way, and the former would be necessary for a Board meeting.

The CPB Board has already made significant efforts to reduce its costs and will consider all reasonable means to keep those costs down. Finally, it should be mentioned that even though the fee will increase, the number of Board members will decrease by more than one-third.

Senator Proxmire: Please provide the Committee with a detailed breakdown of the Board's expenses in fiscal 1981.

Answer:

Expenses	Amount
Board of Directors fees	$ 54,456
Board of Directors travel and expenses	113,672
Total	$168,128

PROPOSED RESCISSION

Question: The Corporation for Public Broadcasting is the primary vehicle for providing federal financial assistance to the 217 radio and 170 television stations that currently comprise the noncommercial broadcasting system.

What effect will the proposed rescission of $20.5 million for fiscal year 1983 have on the Corporation's program areas?

Answer: The requested rescission of $20.5 million would affect each of the Corporation's program areas. One major area affected would be in the grants which CPB makes available directly to the stations for a variety of operational needs. The other major area would be CPB's funding of high-quality programming to be made available for national distribution.

Under the proposed rescission, CPB will have to reduce the funds awarded directly to television stations in the form of unrestricted grants. Such a reduction will have a significant adverse effect on the level of services these stations will be able to provide to their local communities. Many station costs are fixed, i.e. facilities, maintenance and salaries of basic staff. Stations would be forced to cut their contributions to the Station Program Cooperative, which supports national programming. In addition, these stations are also facing reduced or declining support from local tax sources at the same time they are experiencing rising costs.

CPB would also be forced to reduce its support for television program production by almost 20 percent. This would result in a substantial curtailment of CPB support of existing television programs.

In the area of public radio, support to radio stations would decrease by 20 percent at a time when the number of stations eligible to receive CPB financial assistance will increase by 15 percent. This will result in a substantial reduction in funds available for local station operations.

With regard to radio production, National Public Radio (NPR) would be forced to reduce the number of hours of programming which it makes available to the stations it serves.

The decrease of funds available to local radio and television stations would cause considerable decreases in local programming as well as reductions in their overall schedules. It should also be noted that without CPB's station support and programming support, there will be some number of station failures.

In the area of fixed costs, CPB has assisted the stations by making funds available to provide services or by assuming financing costs better borne at the national level than at the local level. CPB has been providing funds for national interconnection since 1971, and for music royalty payments and financing costs related to the construction of the satellite interconnection service since 1978. The rescission will reduce CPB support in this area; by and large, these costs are fixed and increased costs will have to be assumed by the stations or paid through reductions in other CPB program areas.

A reduction in research, education and training affects such areas as program (production) related research, engineering research, training and development and aid to minorities, women and other under-represented groups. These are all areas which either support recognized needs and/or follow statutory guidance.

CPB currently allocates less than the 5 percent of its appropriation allowed by law to administrative costs. Since 1977, allocations to this area have increased in total less than one percent. Further reductions are already scheduled to comply with reduced funding in 1983 and beyond. Additional reductions of this magnitude will necessitate significant reductions in personnel and associated support. The impact will be felt in CPB's ability to respond to its mandated activities.

FUNDING FOR CPB

Question: What was your proposal to OMB for funding for fiscal year 1985, and what is the request for funding by OMB to the Congress?

Answer: CPB requested $130 million. OMB is requesting $85 million.

Question: What do you see as the major problems and goals facing public broadcasting today?

Answer: The major problem facing public broadcasting today is securing funding adequate to assure the survival of a nationwide public broadcasting system. Both public radio and public television audiences are at all-time highs, and public support is similarly higher than it has ever been. The severe cuts in Federal support that begin next year, however, are already putting pressure on the public broadcasting system to reduce the quality and quantity of programming it provides to the American people, and if the appropriations for 1984-1986 are not held at the full authorized level, the effect on public broadcasting could be disastrous.

The most important goal, therefore, is to achieve adequate and stable long-term financing, including a long-term commitment from the Federal government.

Question: What financial adjustments do you foresee occurring in public broadcasting given future limits on federal funding levels?

Answer: The financial adjustments necessitated by the unprecedented size of the cuts to CPB's appropriation would place in jeopardy the very existence of public broadcasting as the public knows it, and would go far beyond the effects intended by the Economic Recovery Program. These kinds of reductions certainly were not anticipated by the Public Broadcasting Amendments Act of 1981.

Adjustments made to accomodate the further rescissions in our 1983 appropriation will seriously erode the concept of advance-year funding. Since 1975, successive Congresses and Administrations have endorsed the concept of advance-year appropriations to assure a predictable and stable funding base for program planning purposes, and to provide insulation of this First Amendment protected institution from political pressures resulting from continuous exposure to the budget/appropriations process.

This latest proposal of OMB to submit a rescission request for FY 1983 of $20.5 million would do irreparable harm to the principle of advance funding which has been in place over six years. For the overwhelming majority of the more than 400 public television and radio stations, their 1983 fiscal years begin on July 1, 1982, less than five months away. Both budget planning and planning for program production are now underway with some commitments having already been made. To tamper further with the FY 1983 appropriation at this late date will have serious negative consequences for every facet of the operations of these stations and other components of the system, including the Corporation's and the stations' capacity to make program funding decisions. If a rescission were enacted, CPB would be forced to revise its budget allocations and, consequently, the allocations for the stations, across the board. Current program decisions would have to be scrapped — exactly the impact that the advance-year funding mechanism was designed to avoid.

With respect to the funding levels for FY 1984 and FY 1985, a reduction in CPB's appropriation by FY 1985 of 50 percent from the current level is nothing short of disastrous. The very ability of many stations to survive at these levels is questionable, as well as the ability of CPB to carry out even its minimal responsibilities under the legislation authorizing CPB through FY 1986. Future funding levels seriously call into question the ability of public broadcasting to continue to provide even the most basic of its program services to the American people. To put these recommendations in their starkest perspective:

- The reduction by FY 1985 from the currrent funding level is $87 million, which is more than the entire amount CPB now gives in direct grants to all public television licensees.
- At the proposed level of $85 million, the loss in CPB funds that go to public television stations for operations and direct CPB support for national program production will equal almost 50 percent of the current value of all national programs

distributed by PBS. There is, therefore, a very real threat to the continuation of many currently distributed programs.

- Support for public radio will decrease by 40 percent from current levels at the same time that the number of stations eligible for CPB assistance will increase by 25 percent.

Financial adjustments at these levels exceed belt-tightening. The subsequent reductions in public television and radio programming and services will destroy the existence of public broadcasting as we know it today. We hope that is not the intention of the Administration. We know it was not the intention of Congress when it passed the Public Broadcasting Amendments Act of 1981, nor presumably of the President when he signed it into law. At the amounts recommended by OMB, CPB clearly would be unable to meet even the minimum, mandatory activities under the statute, and would be forced to report such to the Congress.

PUBLIC BROADCASTING MANDATE

Question: What do you perceive to be the mandate of public broadcasting and why should the federal government be involved in funding such an endeavor?

Answer: We believe that, even in this exciting era of telecommunications advances, public broadcasting's historical mandate remains unchanged. Since its inception public broadcasting has carried out its responsibilities through two fundamental roles: providing the public with a diversity of program choice, and taking the creative risks necessary to serve them better. Based on past experience and predictions of future needs, Federal government involvement has been and will continue to be appropriate and necessary for public broadcasting.

Public broadcasting's role as a "creative risk-taker" stems from its thorough dedication and sole motivation to serve the public. To accomplish this mission public broadcasting affords an environment where individuals and organizations can explore ways to provide telecommunications services that are more responsive to the needs of a changing world and society, driven not by the demand to show a profit but simply to advance the ability of society to serve better its individual members.

Public broadcasting's risk-taking has occurred in both the technical and programming areas, the business of public broadcasting is programming, and in this area the creative successes of public broadcasting are well known. Because public broadcasting is not financed by commercials, it can commit funds to new and innovative programming that prudent businessmen might not consider secure investments. The creative risks of public broadcasting range from comprehensive instructional programs covering all curricular areas, to children's programming like Sesame Street and 3-2-1 Contact, to informational and public affairs programs such as MacNeil-Lehrer, All Things Considered, and to cultural programs like American Playhouse and Jazz Alive. Within business constraints, it is clear that federal support for programming has played a critical role in making possible the creation of these innovative programs. Based on our predictions of future need, continuation of these and similar programs will be impossible without continued federal support.

Public broadcasting's creative achievements in the technical area are equally notable, although less widely recognized. Public broadcasters were pioneers in the use of satellite distribution of television and radio programming, frequency modulated (FM) and subcarrier (SCA) radio, ultra-high frequency (UHF) television, and the latest broadcast service, low power television. As with programming, these technologies were explored and made useful as a consequence of public broadcasting's ability to take the creative risks necessary for providing public services. The "new media age" presents even greater opportunities to develop the public service potential of telecommunications technologies. Again, we believe federal involvement in supporting these pursuits is both appropriate and necessary.

The second of public broadcasting's historic roles has been to provide diversity particularly in response to local community needs. Public broadcasting has consistently provided the public with services not otherwise available. Economists and other academicians confirm that advertiser-supported commercial broadcasters need to reach as large an audience as possible, and, as a result, programs that attract relatively small audiences are not produced. In-depth news and analysis and performing arts are not readily available on commercial television or commercial radio, nor are many programs intended specifically for children or minorities.

Diversity of programming is possible only through diversity of support. One of the fundamental principles, agreed upon by the public broadcasting community, is that support for programming and services should come from a variety of sources, so that no one source of funding can dominate. Federal support, which has ranged from a high of 30 percent of total revenues in 1976 to a low of 21.8 percent in 1973, has provided a substantial although not a dominant means of support for public broadcasting. This federal involvement has created a buffer discouraging the domination of public broadcasting by any individual funder and has further encouraged diversity by providing incentives for recipients to raise funds from other sources. Such federal involvement has made a valuable contribution to public broadcasting and should continue.

The mandates of public broadcasting will remain relevant for many years to come. Lately, many forecasters have asserted that the "media of abundance" will reduce or even eliminate the need for public broadcasting. We, however, contend that there is no practical alternative to the present public broadcasting institution, for a number of reasons. The communications era of abundance has, in fact, not yet arrived. Although a variety of alternative technologies are now developing, over-the-air broadcasting will remain the dominant form of delivering services throughout the 1980's and probably for the balance of the 20th century.

Even the most optimistic predictions assume that cable will not reach more than 50 percent penetration of the nation's households until the end of this decade. Other services — STV, DBS, and other hybrid services still on the drawing board — hold potential, but are not likely to reach even as many homes as cable in this decade. Furthermore, the availability of virtually all of the new services will be limited by the willingness and ability of people to pay for them. Basic cable service typically costs $8 per month, and pay cable services cost $15 to $20 per month. Many families simply cannot afford to pay this much. Public broadcasting, however, costs the federal taxpayer only $0.26 per month per person, and its availability is not limited to those who can pay. Public broadcasting will therefore remain as the best hope of people who can't afford the steep price of admission to the brave new world of the media diversity marketplace.

Second, program diversity does not come about simply by increasing the number of channels of programming from which one can choose. It must be accompanied by creativity, offering people a qualitative choice. Public broadcasting was the alternative. Now it is postulated that specialized services will provide programming equivalent to that currently offered by public broadcasting. But will the new services take creative risks, given the fierce competition now evident between just a few of the many services it is hypothesized will become available. With new program services trying to find and take advantage of the specialized needs and interests of the consumer, the fractionalization of the audience will likely create an extraordinarily precarious economic risk. The result may well be the modern-day equivalent of network program mimicry. In order to fill

110-channel cable systems, we may well see 10 sports channels, 15 game channels, 9 movie channels, 6 cultural/performance arts channels — all trying to distinguish themselves from the competition but vying for the same clearly identified consumer needs, interests, and dollars.

In fact, we have already seen some indication of this phenomenon in the cultural/performance arts cable channels. Four have been announced, but only two are on the air, and these services have not attracted a great deal of advertiser support. Further, industry observers have begun to note that the same kind of segmentation of the most lucrative formats that has already occurred in the commercial radio marketplace now appears to be developing in cable. And today, we see clear evidence that in even the most congested radio markets, a well-defined range of services would not have found itself to the public without public radio. Jazz in New York City is one such example. We must conclude, then, that at least for now there is little evidence that the economies of the new commercial media will encourage creative risk-taking, innovative programming and a genuine diversity of educational, cultural and informational programming.

We further conclude, therefore, that there will continue to be a need for public broadcasting and that it should continue to play its traditional role. Over-the-air broadcasting will remain the only way to provide programming to all people, whether or not they can afford to pay, and the new commercial media may not be substitutable for public broadcasting even in the homes of those who can pay for them.

Federal funding - both by its actual support and the leverage it provides in getting support other sources - enables public broadcasting to provide programs of genuine excellence rather than mere adequacy. For these reasons, we believe that the public interest will be served by continued federal involvement in public broadcasting as declared in the Public Broadcasting Amendments Act of 1981 (Section 396 (a)(4)(5)(6) of the Public Broadcasting Act of 1967, as amended, 47 U.S.C. (1981)).

> "(4) the encouragement and support of public telecommunications, while matters of importance for private and local development, are also of appropriate and important concern to the Federal Government.
> (5) it furthers the general welfare to encourage public telecommunications services which will be responsive to the interests of people both in particular localities and throughout the United States, and which will constitute an expression of diversity and excellence and which will constitute a source of alternate telecommunications services for all citizens of the Nation.
> (6) it is necessary and appropriate for the Federal Government to complement, assist, and support a national policy that will effectively make public telecommunications services available to all citizens of the United States."

60 PERCENT TRIGGER

Public Law 97-35 provides that, should CPB's fixed costs exceed 60 percent of the funds allocated to it, then the stations should pick up the balance of such costs on a prorata basis through reductions in certain allocations.

Question: As the Corporation is mandated to use this "60 percent trigger" only as a last resort because of the added burden which would be imposed on stations, what is the Corporation's intent concerning the use of interest and other resources for fixed cost excess?

Answer: It remains the Corporation's firm intent to seek every means to minimize additional financial burdens on the stations. CPB has not yet developed a policy concerning the use of non-federal funds and the "trigger" mechanism. CPB is currently concentrating on exploring arrangements which will share or reduce costs in areas such as music royalty fees and interconnection. CPB has time before it must adopt a policy affecting the FY 1984 budget.

Question: What actions are being taken to hold down and stretch out these costs?

Answer: In the area of interconnection, we are exploring with PBS and NPR ways to finance adequately the interconnection system based upon public policy concerns and sound business practices. These will result in efforts to keep these costs in line with both the needs and financial capabilities of the stations.

With respect to music royalty fees, CPB is currently preparing to enter into negotiations with the copyright holders over new agreements to take effect January 1, 1983. It is hoped that agreements can be reached voluntarily which will keep these costs at a manageable level given the reduced financial position of public broadcasting.

Question: What actions are being taken with regard to debt payoff?

Answer: Beginning in FY 1981, CPB began an eight-year program for liquidating the deficit which it incurred for the construction of the satellite interconnection system. That program is reviewed annually as part of the CPB operating budget by the Board. To date, $6.5 million has been contributed toward liquidation of the debt.

Question: Have you consulted with licensees and other entities in the system on this matter and, if so, what recommendations have they made?

Answer: CPB has consulted with the national organizations which represent the licensees in connection with formulation of the annual operating budget. The television and radio representatives recognize the deficit which resulted from financing of the satellite interconnection system. They were, however, concerned that application of resources to liquidate the debt might have an adverse impact on current operations, and they recommended that the program be stretched out as much as possible. CPB management and the CPB Board feel that the eight year program which has been put in place represents the minimum prudent plan to bring the assets and liabilities of the Corporation into balance.

INTERCONNECTION

Question: As the Corporation is required to defray 50 percent of the total costs of interconnection, what are your plans for use of appropriated funds in fiscal year 1985 to meet this obligation?

Answer: Under the 1981 Act, the Corporation is required to defray 50 percent of the total costs of interconnection, as well as costs related to satellite financing and music royalty fees. The Act's allocation formula requires that CPB apply six percent of its appropriation to these fixed cost areas. At $130 million, for example, this would amount to $7.8 million. Since the projections for these costs exceed amounts expected to be available from appropriated funds, CPB will be seeking every way to minimize financial burdens on the stations. As indicated in response to the previous question regarding the "60 percent trigger," CPB will work with the licensees to reduce costs in these areas to the extent they are within our control. Also, we will be exploring opportunities for other voluntary arrangements as suggested by the conferees on the 1981 Act. Furthermore, CPB will continue to work with the licensees to develop other sources of financing to supplement the federal appropriation.

ADMINISTRATIVE COSTS

The Public Broadcasting Act Amendments of 1981 provide that 90 percent of the funds available to the Corporation are for the direct support of public television and radio. CPB may retain up to 10 percent for administration, research, training and such fixed costs as copyright royalties, capital satellite costs and its share of the costs of interconnection.

Question: Could you provide us the figure for the percentage of appropriation used for such costs in fiscal year 1981, budgeted for 1982, and projected in your plans for 1983, 1984, and 1985?

Answer: In Fiscal Year 1981, CPB spent 7.7 percent for fixed expenses, 3 percent for research, education and training activities, and 4.9 percent for CPB administration. In FY 1982, CPB has allocated 8.8 percent for fixed costs, 2.2 percent for research, education and training activities, and 4.7 percent on administration. For FY 1983, CPB projects allocating about 9.6 percent for fixed costs, 3.5 percent for research, education, and training activities, and 4.7 percent on CPB administration. For FY 1984 and FY 1985 at the $130 million appropriation level which CPB is seeking, 6 percent would be allocated for fixed expenses, and a total of 4 percent would be allocated for research, education and training activities and CPB administration.

Question: Do these figures include administrative costs of the program fund operation?

Answer: Yes, they do.

BOARD OF DIRECTORS

The Public Broadcasting Amendments of 1981, which was incorporated into the Reconciliation Act, contains major provisions which affect the CPB funding allocation formula, reduce and reconstitute the CPB Board of Directors, and affect other areas with respect to the operation of the Corporation.

Question: Do you view the reduced and reconstituted Board of Directors as beneficial or a hindrance to efforts to meet the challenges facing public broadcasting?

Answer: Since we have no experience with the reduced Board, it is very difficult to say if it will be advantageous or not. We believe it will be as long as the smaller Board remains representative of the American society.

Question: Do you view the decision to place station representatives on the Board of Directors as a positive step toward bringing more unity and coordination among the various groups which comprise the public broadcasting community?

Answer: In May 1981, the CPB Board took the position opposing the naming of station representatives to the CPB Board. The interests of the stations have historically been well represented before the CPB Board by the heads of their organizations. The stated purpose of this provision, to reduce tension in CPB Board decision making, would not reduce tension, but merely move it on to the Board. The result may be a paralyzing clash of special interests with the American public losing out. Also, since the Board must make decisions on allocations of money to stations, there would be an inherent conflict of interest established with members representing these stations. If the conflict were resolved by recusal, then the purpose of having station representatives sit on the Board is frustrated.

PAY ADVERTISING

Question: What problems or conflicts do you foresee occurring if pay advertising were permitted on public stations as a revenue source?

Answer: The most obvious potential problem with public stations accepting advertising is that this will create pressure on public stations to operate just as commercial stations do. Specifically, a public station might change the way it makes programming decisions; with advertising rates controlled by the size of a station's audience, a station would be under pressure to provide programs that attract the largest audience possible in order to increase its advertising revenue. If audience-maximization becomes the goal of public broadcasting, then it will no longer be different from commercial broadcasting.

Another important problem is that carriage of commercials by public stations may increase program costs substantially. Public broadcasting's current contracts with most unions, guilds, and music licensing organizations have been written in terms more favorable to public broadcasters than typical contracts for commercial production. If public stations accept commercials, those parties have made clear that public broadcasting would no longer enjoy such favorable treatment. By some estimates, having to pay commercial rates would double the cost of programming for public broadcasting.

Question: Do you have any information with respect to the views of public station managers regarding the introduction of pay advertising?

Answer: Many public station managers are either skeptical or negative about accepting commercials. An informal non-scientific survey by NAPTS in May 1981 found that 38 percent of television station managers favored the concept, while 62 percent opposed it. It should be pointed out, however, that many who are skeptical about commercial advertising are in favor of conducting the Advertising Demonstration Project to gather better information to evaluate the concept.

Public radio station managers are quite negative about advertising on practical grounds. Indeed, the practical problems became so evident that the Temporary Commission on Alternative Financing voted not to authorize an advertising demonstration project for public radio.

Question: What other financing methods would be available to public stations which would be more or equally viable alternatives?

Answer: There is a rather lengthy list of alternatives that have been proposed, and CPB believes most of these are worthy of serious examination. The Temporary Commission on Alternative Financing should develop information about most of these alternatives. In CPB's own efforts, we are looking into such activities as subscription television; use of ITFS or SCA to deliver non-programming material; teleconferencing; sale of programs to cable, STV, or DBS operations; and teletext/videotext. The Corporation has also set up a Task Force on Long Range Funding to explore every possible avenue of financing.

At this point we have only preliminary information; while some of these alternatives look promising, we believe that, at best, they will help to strengthen public broadcasting income. However, they will in no way replace federal funding nor eliminate the need for the full authorized amount of federal funding in FY 84-86.

UNDERWRITING

Senator Proxmire: The press reports that four major U.S. oil companies dominate the underwriting of public television, funding as much as 72% of the network's prime time. For example, of the 115 corporate underwriters that gave $30 million to PBS in fiscal 1980, Exxon, Mobil, Arco and Gulf contributed more than $15 million.

How much of an impact do large corporate donors have on programming?

Answer: In FY 1979, corporate donations (underwriting) accounted for approximately 25 percent of the total hours distributed by PBS; for FY 1980, it has been estimated at 27 percent. We anticipate that corporate support will probably remain around this level unless we lose our ability to leverage these funds. This does not take into account corporations which support local programming directly.

Senator Proxmire: Please provide the Subcommittee with a breakdown of corporate donations for fiscal 1981.

Answer:

CORPORATE & CORPORATE FOUNDATION FUNDERS - FY1981

$1 Million and Over

Atlantic Richfield Company
Exxon Corporation
Gulf Oil Corporation
Hallmark Cards, Inc.
Mobil Corporation
Shell Companies Foundation, Inc.
Sun Company, Inc.
Texaco, Inc.

$500,000 - $999,999

American Telephone & Telegraph Co.
Chubb Group of Insurance Companies
Colonial Penn Group, Inc.
McDonald's Local Restaurant Association
Montgomery Ward & Company
Prudential Insurance Co. of America

$250,000 - $499,999

Alcan Aluminium Limited
Alcoa Foundation
Arthur Treacher's Seafoods
Connecticut General Insurance Corporation
Deere & Comapny
Ford Motor Company
International Business Machines Corp.
Johnson & Johnson
Lutheran Brotherhood
Mrs. Paul's Kitchens, Inc.

TRW, Inc.
United California Bank Foundation

$100,000 - $249,000

ARA Services Inc.
Archer-Daniels-Midland Company
Beneficial Corporation
Chevron U.S.A. Inc.
Cities Service Company
Coach Leatherware Company, Inc.
Congoleum Corporation
Consolidated Foods Corporation
Del Monte Corporation
General Motors Corporation
Goodyear Tire & Rubber Co., The
Honeywell
Metropolitan Life Insurance Company
Morgan Guaranty Trust Co. of N.Y.
Parke, Davis & Company
Reliance Group
Shaklee Corporation
Smith Klein Corporation
Sun Life Assurance Co. of Canada

$50,000 - $99,000

Atlantic Richfield Foundation, The
All American Sports, Inc.
Amax Foundation, Inc.
Ammco Tools, Inc.
Ashland Oil, Inc.
Bailey, Charles M., Company, Inc.
Bank of Tokyo Trust Company
BankAmerica Foundation
Bankers Life Company
Bendix Corporation, The
Boston Five Cents Savings Bank
Champion Products, Inc.
Chevron U.S.A. Foundation
Chicago Bridge & Iron Foundation
Chronical Broadcasting Company
Clorox Company Foundation, The
CONOCO Inc.
Continental Electronics Mfg. Co.
Continental Elsco
Crown Central Petroleum Corporation
Dayton Hudson Foundation
Dial Corporation
Dillon Read & Co. Inc.
Dresser Foundation, Inc.
Eastman Kodak Company
Elliman, Douglas L. & Co., Inc.
Emhart Corporation
Fairchild Camera & Instrument Corp.
Fieldcrest Foundation
Fieldcrest Mills, Inc.
First Jersey Securities, Inc.

French, R.T. Company, The
Gannett Foundation
Grumman Corporation
Hanley Company, Inc.
Harsco Corporation Fund
Heinz, H.J. Company Foundation
Herbert, Charles and Associates
Holzer, Philip & Associates
Ideal Basic Industries
International Telephone & Telegraph
Interpace Corporation
Jefferson Standard Life Insurance
Jones & Laughlin Steel Corporation
Kellogg Company
Kikkoman Foods, Inc.
Korett Foundation
L'Oreal of Paris
Lancome
Lilli-Ann Corporation
Lionel Corporation
Loctite Corporation
LTV Corporation, The
Lykes Bros. Steamship Co., Inc.
Manufacturers Hanover Trust Company
McDonald's Corporation
Melchor Associates
Mountain Bell
National Distillers and Chemical Corp.
Natomas Company
New England Mutual Life Ins. Co.
Noble Roman's, Inc.
Northwest Energy Corporation
Northwestern Bell Telephone Company
Oberjuerge Rubber Company
Panhandle Eastern Pipe Line Company
Perrier, Great Waters of France
Peugeot Motors of America Inc.
Phillips Petroleum Company
Polaroid Foundation
Quaker Oats Company, The
Renault USA, Inc.
Rochester Telephone Co.
Russell Corporation
Seaboard Coast Line Industries, Inc.
Searle, G. D. & Company
Seiko Time Corporation
Sherwin Williams Company, The
Southwest Petrochem, Inc.
Suffolk Franklin Savings
Sybron Corporation
Tiger International, Inc.
Transamerica Corporation
Vought Corporation
Warner-Lambert Company
Wheelabrator Foundation Inc.
Wilson Foods Cororation
Xerox Corporation

RELATIONSHIP WITH PBS

Question: Is CPB considering a proposal to channel all television program monies to the Public Broadcasting System?

Answer: CPB is not considering a proposal to channel all its television program monies to the Public Broadcasting System.

Recently the CPB Board of Directors asked the staff to prepare a paper which would explore all of the potential options for distributing its programming funds. Among the options presented was one which channeled all of the Program Fund's monies through the Public Broadcasting System. This option was rejected by both the staff and the Board at that time.

Question: If so, what does this mean for the delivery of programs via other than television or broadcast technology?

Answer: Although CPB is not going to channel this money to PBS, it is important to note that two years ago CPB's 5-Year Plan called for allocations of $10 million for software to be expended when the $220 million appropriation level was reached. Since the appropriation is declining and the basic national program schedule will lose funds, CPB feels it must devote virtually all of its support to broadcast materials.

Question: What effect do you think this will have on CPB's obligation to ensure the delivery of programs to the American people that are obtained from diverse sources?

Answer: CPB's obligation to ensure the delivery of programs that are obtained from diverse sources would continue no matter how program monies were channelled. Currently our Program Fund allocates approximately 40 percent of its money to independent and minority producers. Coupled with its support for ongoing programs, we believe the present method is as diverse as can possibly be achieved.

"DIAL" MAGAZINE

Question: What is the current relationship between the "Dial" Magazine and public TV?

Answer: "Dial" Magazine started as a cooperative venture of public television stations WNET, New York; WETA, Washington, D.C.; KCET, Los Angeles; WTTW, Chicago. It now includes, WTVS, Detroit; KUED, Salt Lake City; WXXI, Rochester; WMVS, Milwaukee; WPBT, Miami; KCTS, Seattle; KETC, St. Louis, and WGBH, Boston. All stations share the cost of producing the magazine. Each issue has features keyed to national programs appearing on public television during the month of the issue and includes the program schedule of the local station. "Dial" is available only through station membership and now has a circulation of 1,010,000.

Question: How much money has "Dial" earned and how are the profits distributed?

Answer: "Dial" has earned no profits to date, but expects to be out of the red within the next fiscal year. The distribution method of surplus income has yet to be decided.

Question: To what extent does this lessen the need for federal funding?

Answer: "Dial" Magazine was started as a method of off-setting the costs to public television stations of their program guides. Program guides have traditionally been a substantial cost to local stations. However, they are important in attracting new members and keeping old ones. While many local program guides have offered various sorts of local advertising, "Dial" was conceived as a way of producing a guide which would have national advertising potential and be able to reduce the station costs and perhaps eventually even provide some additional revenues to participating stations. It is only one method by which some stations have tried to offset their costs and perhaps even obtain additional funds. Because all stations do not participate and because it has not yet provided any additional income, such revenues as it could potentially generate would not produce either enough funds for national programming or sufficient leverage to obtain large corporate underwriting.

NATIONAL PUBLIC RADIO

Question: What are the current plans for CPB funding of program production for public radio?

Answer: CPB funds program production for public radio in two ways. First through its Community Service Grant program which makes funds available for local program production or the purchase of programming from independent producers or other producing groups or agencies. Currently, public radio stations are spending 58.5 percent of their Community Service Grants for programming.

CPB also contracts with NPR for the production of specific program series. The programming series come under the general headings of News and Information programs, Performance programs, Specialized Audience programs, a Satellite Program Development Fund, Educational and Programming Activities.

Public Radio programming priorities are determined by close and continual consultation with stations on an annual basis as to the types of programs that they feel their communities need and the areas of emphasis that seem necessary.

NPR's News and Information programs include All Things Considered, Morning Edition, Options in Education, Science Unit and Special Events.

Performance programs include jazz, classical music, opera, spoken word, and specialized series.

Specialized Audience Programs include Spanish bilingual programming, children's programming and other specialized audience programs. The goal of the Department of Specialized Audience Programming Services is to concentrate its special attention on those groups which, by virtue of their ethnic and social identity, are subjected to the disadvantages inherent in a position of inequality in the American social structure. There are presently six different program services to all CPB qualified public radio stations. During the first three quarters of FY 1981, four programs and two series won national programming awards. Because of this department's outreach, individuals and organizations representing special interest groups, a number of independent and member station producers have contributed material to these productions, and many of them have been cultivated and developed into regularly contributing NPR producers.

Also administered by NPR is a Satellite Program Development Fund. The purpose is to encourage programs from independent and station producers to help meet the demand for new and diverse radio programming. In order to foster this, NPR's role is limited solely to administering this fund.

The fund has supported the development, production, marketing, promotion and distribution of 63 different projects since its inception over two years ago. This has resulted in the creation to date of over 404 original hours of nationally distributed programs sent to the stations for their use. It should be noted that while this extended program service usage continues to rise, over 80 percent of these offerings are carried by less than 25 percent of the stations according to most recent data available.

An important objective of the Satellite Program Development Fund is to increase the participation of women and minority producers in the creation of public radio programs. Producers of Asian Pacific, Black, Latino or Native American programs won 37 percent of the grants in the first three rounds. Women producers have won 45 percent of the SPDF individual grants. These participation figures are not predetermined quotas or targets, but an honest effort by NPR to continue an aggressive outreach policy that seeks consultation and insures that minority people and women are represented at every level in proposal evaluation and selection.

CPB also funds, through NPR, a national component to complement local services for the handicapped. After 18 months of programming the Service for the Print Handicapped, 58 of the nation's 82 radio information services are broadcast by public radio stations. Current audience research indicates that the service reaches 61,000 print handicapped lisiteners through closed circuit radio services and another 20,000 through main channel broadcasting. Over 466 hours of programming were produced in the first three quarters of 1981 with a projection of 621 hours for the current fiscal year.

Educational Programming Services work with CPB Educational Activities Department in funding programs for use in post secondary and elementary educational institutions. They also explore the nonbroadcast of radio/audio technology that contributes to the quality, efficiency and cost of education.

Question: Are all the funds sent directly through National Public Radio (NPR)?

Answer: As described above, programming is funded through a variety of mechanisms with the Community Service Grants going direct to the stations, some funds to NPR for the productions they do themselves and other funds administered by National Public Radio for use by stations, independent producers, women and minorities.

Question: What is the term of the current contract between CPB and NPR for NPR's general programming support?

Answer: NPR production contracts are annual with the current contract running from October 1, 1981, through September 30, 1982.

It is important also to mention here that there is an annual program review panel composed of predominantly lay personnel, including women, minorities and independents. The National Public Radio programming staff and senior executives make a presentation to this group with explanations of what they do and why. The panel is free to take as much time as they feel necessary to question the NPR staff about any part of their programming service and operating procedures. The results of this review process are used as evaluation criteria and a planning document in conjunction with input throughout the year from producers, users, listeners and CPB staff evaluations.

TELEVISION STATION COVERAGE

Senator Proxmire: Mr. Pfister, you state that for the next three years public broadcasting will be totally dependent on direct local support to make up the difference beween reduced federal funds and rising costs. How cost effective it is to have more than one public television station serving the same area?

In the Washington market, for example, there are now four public television stations which compete for financial support each year and all of these stations broadcast essentially the same programs. I am referring to Channel 22 in Annapolis, Maryland; Channel 54 in Northern Virginia; and Channels 26 and 32 in Washington, D.C. Prior to the arrival of the additional stations a few years ago, the area had been served by Channel 26 for approximately 20 years

Has the Corporation given any consideration to eliminating stations which broadcast in the same community?

Answer: Public Law 95-567, Section 396K, states that the "Corporation shall make a basic grant from the portion reserved for public television stations to each licensee and permitee of a public television station that is on the air." That portion not required by statute to be distributed to each and every public television licensee is distributed on an incentive basis and is directly related to the amount of local support generated by each television station. Television stations are not, of course, totally supported by CPB. On an average, only 17 cents out of every dollar is currently CPB funding.

In terms of the number of television stations serving the same area, the four stations to which you refer, Channel 22 in Annapolis, Channel 54 in Northern Virginia, Channel 26 licensed to Virginia and Channel 32 licensed to Washington, may have a certain amount of signal overlay in various areas of the District of Columbia. In fact, only one station is licensed in the District of Columbia, that is, WHMM Channel 32. It is more by virtue of topography that the District of Columbia or parts thereof may be capable of receiving all four signals. In fact those stations are licensed to serve very specific areas and diverse audiences.

There are very real differences in the audiences which these stations stations serve. There is a large minority population in the District of Columbia, as well as and including what might be termed "the Capitol audience." The Maryland and Virginia stations serve both their own state audience as well as - and including - their own close-in suburbs. While these stations do broadcast some of the national schedule, each station also produces and broadcasts a number of local programs aimed at the specific audience it serves.

Question: What is the criteria necessary to own and operate a public television station?

Answer: There is only one set of criteria necessary to own and operate a public television station. Those criteria are set out by the FCC and are almost exactly the same for noncommercial broadcasting as for commercial broadcasting, with two possible exceptions. A noncommercial or public station must be noncommercial and may not air editorials. In all other respects, the requirements are the same. They are as follows:

> The prospective broadcaster must ascertain and plan to meet the programming needs of the locality he intends to serve through surveys of community leaders and of the general public.

> The next step is to apply for a construction permit. These forms require information about the citizenship and character of the applicant, as well as his financial, technical and other qualifications, plus details about the transmitting apparatus to be used, antennas and studio locations, and the service proposed.
>
> Applicants must give public notice of their plans to afford the opportunity for public comment.

This is a summary of the basic requirements for obtaining a license. There are numerous other technical, programming, equal opportunity and reports and record keeping requirements which a station must fulfill once it is broadcasting. These criteria are set forth in the official FCC Rules and Regulations as authorized by the Communications Act of 1934. In addition, stations must meet various requirements at the state and local level.

CPB has its own set of criteria that stations are required to meet before they are eligible for funding over and above that required by law. These criteria are a result of consultation with all public television stations, their representatives, and the interested public, as well as CPB's own studies as to the most equitable way to encourage continually better public television service. CPB's requirements are as follows:

1. Each grantee must have a staff headed by a manager or other chief executive officer who has program and budget authority as authorized by the governing board of the licensee. (This criterion was recently amended to require no less than five full time staff, one of which is the manager or chief executive officer, and the equivalent of five additional full time personnel. Stations not meeting the revised criterion have until October 1, 1984, to comply.)

2. When more than one grantee is operated by one licensee, each such grantee in addition to the above, must be headed by a manager or other chief executive officer who reports directly to the governing board of licensee; or in the case of university licensees, each general manager should report on an equal basis to the next level of governing superiors.

3. Each grantee must demonstrate that its annual non-federal income exceeds $150,000. (This requirement recently was changed to $300,000, with October 1, 1984 as the compliance date.)

4. Each grantee must have studio and production facilities and regularly produce and broadcast locally-originated programming.

5. Each station must meet the following broadcast minimums:
    - a. during the first full year of on-air operation, the station must broadcast at least six days a week, fifty-two weeks a year, for a total of at least 2500 hours; and
    - b. for all stations during the second such full year of operation and in all succeeding years, broadcast on a schedule of seven days per week, fifty-two weeks per year, for a total of at least 3000 hours.

EFFECTS OF PROPOSED RESCISSIONS

Senator Weicker: In 1975, Congress decided to provide the Corporation for Public Broadcasting with a five-year authorization and a two-year advance appropriation in order to ensure the independence and permit advance planning that is so essential to public broadcasting's ability to provide our citizens with high quality and diverse programming. How do these proposed rescissions reflect our national commitment to public broadcasting?

Answer: The proposed rescissions call into serious question our national commitment to public broadcasting in two ways. First, the American public has demonstrated its support of a free and insulated public broadcasting system and has made a large investment in its growth and development. By all measures, public broadcasting programs are now reaching more people than ever before. These rescissions would rob the American public of the fruits of its investment in this system. Second, the constant revisions to already appropriated funds play havoc with needed program planning and make a mockery of the concept of advance funding which the Congress created to provide insulated/predictable and stable funding for public broadcasting.

Senator Weicker: Under the President's revised request of $116.5 million in fiscal year 1983, $93.5 million in FY 1984, and $85 million in FY 1985, what would be the impact on the operations of Connecticut's public broadcasting station?

Answer:

COMMUNITY SERVICE GRANTS PROJECTION

- Connecticut -

	FY 82 @$172M	FY 83 @$116.5M	FY 84 @$93.5M	FY 85 @$85M
Radio				
WPBH, Hartford	$ 90,929	$ 49,297	$ 36,536	$ 28,774
Television				
Connecticut Network	504,027	316,723	193,685	173,376
WEDW, Bridgeport	*165,086	163,465	123,099	111,547
TOTALS	$760,042	$529,485	$353,320	$313,667

*Limited by 50% rule.

Senator Weicker: How would such a reduction affect Connecticut's public broadcasting station's ability to acquire high quality programming which it needs in order to maintain its audience and public donations?

Answer: The reductions listed above would have two principal effects on Connecticut Public Broadcasting's abilities to acquire high quality programming:

1. They would suffer a substantial reduction in their Community Service Grant which provides them with discretionary funds with which they are able to acquire programs through the public television cooperative or from national syndicators.

2. Because of the reductions, the Program Fund of the Corporation for

Public Broadcasting will be substantially reduced and therefore will provide considerably fewer programs to PBS and therefore to Connecticut Public Broadcasting.

In a less direct ways, but perhaps in the long run more detrimental, other effects will be: a generally smaller station program cooperative; the inability of CPB to leverage private funds; and the loss of audience and, therefore, community support.

PUBLIC BROADCASTING FUNDING

Senator Eagleton: I understand the Administration claims that their proposed cuts in CPB's appropriations can be made up by corporate, foundation and private support. Do you have any evidence that supports or refutes that claim?

Answer: While the Administration says that corporations, foundations and individuals can make up the difference, there is substantial evidence to the contrary. Foundations themselves confirm this hard reality. A study by the Urban Institute estimates that "nonprofit organizations can expect to see a three-year loss of charitable contributions amounting to $18.3 billion, due to the impact of the 1981 Economic Recovery Tax Act."

The president of Borg-Warner Foundation, William DuVall, has said "there is no way that corporations are going to fill the dollar gap." A spokesman for the Ford Foundation says that a year ago it received about 80 requests for funding each day. This year, it receives an average of 100 requests a day. The New York-based business research institute, The Conference Board, recently issued a report that shows why it is naive to count on corporations to take up the slack. The Conference Board survey of 427 major corporations showed that only six percent planned to increase their philanthropic giving in response to the President's budget cuts.

Even the head of the White House Task Force on Private Sector Initiatives, C. William Verity, Chairman of Armco, has said, "it's going to be a very tough job."

Spending cuts in federal health and welfare funds are stirring greater efforts to get donations for major health research and social services. There is increasing competition for scarce funds from symphonies, opera and dance companies, museums and universities, who are also victims of austerity.

Alexander Trowbridge, former Secretary of Commerce and now president of the National Association of Manufacturers, is a member of the President's Task Force on Private Sector Initiatives. He has admitted that "we can't fill the gap dollar for dollar and program for program." While public broadcasting's sources of income are, as they have always been, diverse, the federal portion is essential for stimulating those other sources. The imprimatur of government support is vital. Without it, our other sources of support could fall off. Cuts in federal support to public broadcasting will have a ripple effect. It is clear that when the federal government sets a priority, the private sector responds. Lack of that federal imprint will dry up our support from other sources.

Senator Eagleton: The 1981 authorization act for CPB set up an advertising experiment for a select number of radio and television stations. Do you feel this is in the best interests of public broadcasting in the long run, and would advertising revenues on public stations make up for the loss of appropriated funds?

Answer: Both CPB and the majority of the public stations believe that accepting commercials would be unwise for public broadcasting. A non-scientific survey by NAPTS found that 62 percent of television station managers were opposed to the concept. Public radio managers are overwhelmingly negative about advertising. Much of the opposition is based on pragmatic reasons. Commercial radio did not provide certain types of programming for which there was a real public demand. Public radio was created to fill these voids in programming and has gotten ever-increasing support from its audience. Commercial advertising would change the very nature of station programming and would place an added financial burden on stations. For these practical reasons, the Temporary Commission on Alternative Financing voted not to authorize such a demonstration for public radio.

Many public stations, such as some of the university licensees, are proscribed from airing commercials.

The most obvious potential problem with public stations accepting advertising is that it will create pressure on public stations to operate just like commercial stations do in such areas as selecting programs which would simply increase audiences. Such an attitude would change the whole thrust of public broadcasting, since it would no longer be an alternative to commercial broadcasting and would be unlikely to continue to serve diverse interests.

Production costs would also increase since most unions, guilds, and music licensing organizations give public broadcasting more favorable rates than commercial broadcasters. It is estimated that paying commercial rates in these areas would double the cost of programming on public broadcasting. For these reasons, it seems most unlikely that advertising revenues could make up the loss in federal funds.

Senator Eagleton: Since the program product is the end result of public broadcasting's efforts, how will the President's proposed cuts for fiscal years 1983, 1984, and 1985 affect CPB's national program fund? Also, what impact will the proposed cuts in local station grants have on the quality and diversity of national programming?

Answer: The President's proposed cuts for Fiscal Years 1983 - 1985 will seriously jeopardize CPB's national program funding efforts. Much of its efforts to stimulate innovative American-produced programs could be reduced or eliminated as well as the amount available for independent producers. Also, CPB's ability to sustain existing programs such as MacNeill/Lehrer or All Things Considered would also be seriously weakened.

Since a substantial proportion of local grants which CPB gives the stations are allocated to programming, it is inevitable that national programming will suffer. Stations contribute substantial sums toward the purchase of national programs. If these funds are reduced the number of programs produced and shown will be reduced.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

STATEMENT OF CHARLES BENTON, CHAIRMAN

ACCOMPANIED BY:
BESSIE B. MOORE, VICE CHAIRMAN
TONI CARBO BEARMAN, EXECUTIVE DIRECTOR
DOUGLAS S. PRICE, DEPUTY DIRECTOR
MARY ALICE HEDGE RESZETAR, ASSOCIATE DIRECTOR

SUBCOMMITTEE PROCEDURE

Senator RUDMAN. The subcommittee will now be in order.

We will now hear from Mr. Charles Benton, Chairman of the National Commission on Libraries and Information Science.

We would appreciate it very much if you would provide us with a capsule summary, if you would like, and also, if you would care to introduce those who are with you today.

Senator PERCY. Mr. Chairman, would it be possible for me to introduce Mr. Benton to you?

Senator RUDMAN. I think that would be fine.

INTRODUCTION OF THE CHAIRMAN

Senator PERCY. And I regret I will not be able to stay because of my departure for Germany.

Mr. Chairman, I am really very honored and privileged to have an opportunity to introduce Charles Benton. His father and I have worked together probably for 35 years. He was former Senator Benton, founder of Benton and Bowles, a distinguished American whom we all loved and respected very much indeed.

Mr. Benton is a private industrialist. He was in the same business that I was in. I made projectors and he distributes the films. He is chairman of the board and essential owner of Public Media, Inc., one of the largest 16-millimeter distributors in the world. They distribute many fine products throughout the world.

He is doing this voluntary work as the Chairman of the National Commission on Libraries and Information Science, appointed in 1978 and reappointed in 1980. He probably looks to this as one of the most powerful but one of the smallest, a small, but powerful, permanent agency in the executive branch of the Government. It has a total staff of nine. It is lean and hard, and yet it services the libraries across the country.

Severe budget cuts are being made even in this area, which again I think is an example of where we can be pennywise and pound foolish.

The amount of good that they have done is immense. Every single town in America which has a public library feels the impact of their work.

They have a totally dedicated staff and an outstanding board, an executive director who has a very outstanding record of leadership and accomplishment.

So I take great pleasure in introducing Charles Benton to you, not only as a lifelong friend, but as a friend who greatly admires his contribution and that of his entire family, including his wife, who is the U.S. representative to UNICEF, serving the children of the world.

So whether it's the young people or the old people who develop their minds, it's very much the responsibility of the entire family.

And I might say, as the 32-year trustee of the University of Chicago, the Rockefellers, the last witness who appeared just before us, is from that family, gave $92 million to the University of Chicago. They were always looked to as the founders. But the Benton family made a gift to the university of the income of Encyclopedia Britannica. That gift alone has now exceeded the entire Rockefeller gift. It has enabled one of the great universities in this country to maintain itself in its traditionally high standards.

So it is with that background that I express appreciation for his serving in the capacity of Chairman of NCLIS and the contribution that he and his staff make.

Thank you.

Senator RUDMAN. Senator Percy, thank you very much for introducing the witness. We appreciate your being with the panel this morning.

INTRODUCTION OF THE VICE CHAIRMAN

And I would now ask Senator Bumpers of Arkansas to introduce another witness.

Senator BUMPERS. Mr. Chairman, the woman in the plum-colored coat is probably the most worthy adversary I ever ran into when I was Governor. As a matter of fact, one of my first commitments to the State was to reorganize State government. And so as part of that reorganization effort I was going to put the Arkansas Library Commission into the Department of Education, and Dr. Moore didn't want me to do that. And I don't know to this day how I ever won her over because she was about to torpedo the whole reorganization effort, and she had more clout than I did as Governor.

She has been on the National Commission on Libraries and Information Science now through four Presidents. She has served nine Arkansas Governors on the Arkansas Library Commission. She feels, as you and I and Senator Percy feel, that libraries are the bulwark along with education between what would otherwise be a tyrannical government and an enlightened people.

I forget who it was who said you can tell more about a civilization by how many libraries they have than anything else. And Dr. Bessie Moore is a firm believer in that. She has dedicated her entire life to libraries and making education and reading available to everybody.

She is a brilliant woman. She commands as much respect in Arkansas, and maybe more, than any other person down there. The reason I say that is so you'll pay close attention when she's talking. [Laughter.]

And if you don't, she will probably tell you to.

And the fact that the President is trying to eliminate this entire program—I forget what the amount is, it's an insignificant amount—it's peanuts, really, in a sense—but I could have told President Reagan that he ought not to do that because Dr. Moore wouldn't like it.

And, as I say, all the fights that I ever had with her are just like the fights that I have with my wife: The ones I win just aren't over. [Laughter.]

So with that, you can proceed to listen to these witnesses.

Senator RUDMAN. Thank you very much, Senator Bumpers. I expect that you know whereof you speak because last evening I received a call from a very dear friend who told me I'd be hearing a lot of witnesses today and there was one I ought to listen to, and that was the lady from Arkansas. So I guess she has a few thoughts.

Senator BUMPERS. Indeed.

PREPARED STATEMENTS

Senator RUDMAN. Would you like to proceed, Mr. Benton.

[The statements follow:]

STATEMENT OF CHARLES BENTON

My name is Charles Benton. I am the Chairman of the National Commission on Libraries and Information Science (NCLIS). The Commission is a permanent, independent agency established to advise the Congress and the President on research, planning, and national policies for libraries and information science. The Commission's appropriation request for fiscal year is for $700,000, which is $2,000 less than fiscal year 1982. We had considered requesting our full authorization of $750,000, but felt that we should do our share to help trim the budget.

I am very pleased to be here today to report on what I believe is the most productive year in the history of the Commission, and to present our plans to you for fiscal year 1983.

In this fiscal year alone, the Commission, through the donated services of more than 6,200 hours from 61 top-level experts in the country has completed the work of three major task forces, all outgrowths, in one way or another, of the first White House Conference on Library and Information Services. A fourth task force is drafting its final report this month. In addition, we have completed a major project with the Federal Library Committee and the Library of Congress on Intergovernmental Library Cooperation. We have also taken significant steps to bring together key officials to improve the dissemination of Federal information. We estimate that through our work plus the contributed efforts of the private sector, we have saved the government and the taxpayers several times our total budget. I would like to take a few moments to review some of our major activities and plans with you.

We are unique in the Federal Government; the only independent agency to advise both the Executive and Legislative Branches on information policy. We play very significant roles for the government and for the library and information users of this country: (1) We serve as a resident expert for all branches of the government in the library/information field. With information activities comprising almost half of the Gross National Product, this is a crucial area of expertise; (2) As an independent agency, we serve as an honest broker bringing together individuals from all branches of government with those at the state and local levels and with representatives from the private sector; (3) Through our extensive network of contacts with individuals and associations in the library/information field, we are able to provide a forum for the entire community; and (4) We serve as a catalyst identifying problems, suggesting solutions, and making things happen.

Our Work With Congress

We have been working closely with Members of Congress to review existing library/information legislation. At the request of the Chairman of the Subcommittee on Postsecondary Education of the House Committee on Education and Labor, NCLIS assisted with their oversight hearings on the Library Services and Construction Act (LSCA), helping to identify witnesses from a wide range of interests to ensure a balanced representation of views and also helping to clarify the issues to be discussed. When the Subcommittee Members were unexpectedly required to remain in Washington, D.C. for a critical budget vote, the Commission conducted hearings in Detroit in their behalf and provided the transcript to the Subcommittee. More recently, at a January Executive Committee Meeting of the Commission, Congressman Paul Simon asked us to help with the analysis of the entire oversight hearings record, and also to develop recommendations for improving LSCA in view of these hearings and the resolutions from our White House Conference on Library and Information Services. Our major concerns in this area have been to determine the appropriate role of the Federal Government, to make certain that the needs are identified and met, and to ensure that the government gets maximum return on its approximately five per cent share of public library budgets.

This assistance to Congress from the Commission not only builds upon the recommendations from the first White House Conference on Library and Information Services, but also from our follow-up task forces to that Conference. The Commission's Task Force on Community Information and Referral Services has completed its work and has prepared a draft report. Recommendations from the task force will be incorporated into the specifications for legislation.

Another important series of findings and recommendations are those of the Task Force on Library and Information Services to Cultural Minorities. This Task Force held hearings in June of 1981 during the American Library Association Annual Meeting and heard moving and valuable testimony on the special needs of the many cultural minorities in this country. This information will also be incorporated into the legislative specifications.

In addition, the Commission has continued to serve as a resident expert by assisting Members of Congress and their staffs in answering questions from their constituents. NCLIS receives requests weekly for information ranging from the location of a public library in a sports arena to requests for nationwide statistics on library service to citizens in rural areas.

We also plan to continue to work with Congress on three other topics of considerable concern: (1) The provision of library/information services to senior citizens; (2) Harnessing new technology to improve services to citizens in rural areas--more than one-third of the population; and (3) The eradication of illiteracy.

Work With the Executive Branch

What I believe is our most significant accomplishment this year is the report of the NCLIS Task Force on Public/Private Sector Relations. This is a major milestone in the effort to define the role of the Federal Government in disseminating information paid for by the taxpayers and to improve the handling of information resources by the Federal Government. The published report will be available later this month and will be distributed widely to Members of Congress, governors, mayors, and other key decision-makers, and to the library/information profession, lawyers and business leaders. The Office of Management and Budget's Office of Information and Regulatory Affairs has singled it out as providing extremely useful information to assist them in fulfillment of their responsibilities under the Paperwork Reduction Act (Public Law 96-511). The report will be distributed to senior agency officials responsible for information resources management for use in the cost-effective diffusion of government information. The Government Accounting Office (GAO) has also indicated its usefulness in their examination of Federal information practices and policies.

In its role as "honest broker," the Commission has held monthly meetings of senior officials **in both the** Executive and Legislative Branches to seek ways to improve the dissemination of Federal information.

These meetings have already saved the taxpayer hundreds of thousands of dollars by avoiding duplication of effort through the timely sharing of information. At one meeting, for example, three agencies discovered that each one independently was about to begin an examination of Federal information centers. Within five minutes, a great deal of time and money was saved. At each forum, Federal officials discuss problems of mutual concern and share ideas on solutions to these problems. Recent meetings have focused on the use of standard numbers for government publications, including those prepared under grants and contracts, Federal information centers, and combined purchasing to cut costs.

During fiscal year 1983, we will be continuing these meetings, pursuing further our discussions of the use of standard numbers and exploring in addition, the roles of the public and private sectors, methods for saving money in disseminating information paid for by taxpayers, and other information policy issues.

A major program in this area will be the implementation of recommendations in the Public/Private Sector Task Force report, which will be presented to the full Commission at its April 1982 meeting. Although it is impossible to predict what recommendations the Commission will make, we anticipate that we will undertake a major program to implement some of the recommendations of the task force. We will also continue our work with the Office of Management and Budget on implementation of the Paperwork Reduction Act.

The Commission continues to provide assistance to other agencies. To cite just a few examples, NCLIS has provided assistance to OMB in implementing the Paperwork Reduction Act, to GAO for advice on their plans for information resources management, to the Department of Education for assistance with a study to improve their library/information operations, and to the Internal

Revenue Service in developing a system to describe and evaluate computer software.

Services to the Public

A major thrust of Commission activities this year has been devoted to implementing the resolutions from the first White House Conference on Library and Information Services (WHCLIS), which was an investment of the time of more than 100,000 people nationwide and the cost of more than $7 million of state and Federal dollars. In brief, after reviewing all of the resolutions, we have:

(1) Sent individual letters with copies of the pertinent resolutions to the head of each government agency having responsibility for the area in question. We have received responses from each of these agencies;

(2) Sent copies of all resolutions requiring state and local action to the Chief Officers of State Library Agencies (COSLA) and to the White House Conference on Library and Information Services Task Force (WHCLIST).

(3) Been working with the Chairman and Staff of the House Committee on Postsecondary Education of the Committee on Education and Labor on incorporating the appropriate WHCLIS resolutions into specifications for revised library/information legislation; and

(4) Charged our Legislative/Public Awareness Committee with examining the remaining resolutions and making recommendations for action by NCLIS.

The Commission is carrying out its mandated responsibility to study and analyze the informational needs of rural America by working closely with the National Agricultural Library and also by giving support and guidance to the program of the Intermountain Community Learning Information Center Project (Colorado, Idaho, Montana, Nevada, Utah and Wyoming). This is a grassroots activity, essentially dependent on the state and local governments and the state extension services.

We have worked closely with the White House Conference on Aging, assisting their staff in the earliest planning stages and sharing information with them from our Conference. Our Vice-Chairman, Dr. Bessie B. Moore, attended as an official observer. In part because of her hard work, resolutions related to library services for senior citizens were passed.

In addition, in our efforts for combatting illiteracy, we continue to work with individual library and professional trade associations. To cite two examples, we are active participants in the Coalition for Literacy of the American Library Association, and at our invitation, Mrs. Barbara Bush visited the Enoch Pratt Library Literacy Center and plans to visit additional libraries to help encourage volunteers for this important literacy effort in public libraries.

Services to the Profession

As the only independent Federal agency working with state and local community libraries to use technology for resource sharing, and also to identify the appropriate roles of the Federal, state and local governments, NCLIS has been called upon frequently to work with individuals and associations from all parts of the country. We have been requested to provide a forum to discuss a "Research Agenda for Library and Information Science for the 1980s" by private sector associations. We also provide briefings to library/information specialists from other countries, and we are called on to participate actively in national and international professional meetings and conferences.

Plans for Fiscal Year 1983

The appropriations estimate describes our plans and programs for fiscal year 1983. The five major initiatives build upon the work of our four task forces, the recommendations from the White House Conference, and the needs and concerns of the citizens of the country. They also implement the Administration's desire to make things more cost effective, in partnership with the private sector and volunteerism. Because of our contacts with state and local officials and with the private sector, we are able to recommend policies on the appropriate roles of the Federal sector. This will be especially relevant in the upcoming debates on the new Federalism. These initiatives are:

(1) Development of cost-effective and cost-beneficial programs for the dissemination of Federal information;

(2) Development of specifications for revised legislation for library and information services;

(3) Appropriate application of technology for library/information resource sharing;

(4) Examination of the changing role of public libraries (both urban and rural) and the development of ways to assist them in harnessing the new technology, increasing cooperation with the private sector,

and increasing the participation of more volunteers for special programs (e.g., combatting illiteracy) to improve services;

(5) Identification of the library and information needs of senior citizens and the rurally remote and the development of programs to meet those needs efficiently and effectively.

Rather than review these in detail now, I will be happy to provide additional information about any of these programs for you.

As you know, the Office of Management and Budget has recommended zero funding for our Commission in 1983. I believe this would be a major error that would have an adverse impact on the citizens of this country. We believe if we had been granted an appeal to the President, he would have recognized the importance of continuing this agency. The Commission was established as a permanent, independent agency. It is a unique and cost-effective agency. I know of no other agency that provides as great a return on the investment as does NCLIS. The total dollars (seven hundred thousand) are a very small price in return for the savings NCLIS has effected and for the contributions by the private sector. In addition, the Commission anticipates funding from the private sector in excess of its total budget to undertake needed research projects and to provide information to assist in recommending policy. The Commission has a staff of only nine people. As a businessman and Chairman of the world's largest distributor of films and video for education, and as President of a private foundation devoted to the area of communications, I have been impressed by the enormous return on investment of this tiny, though important, agency. I know of few, if any, businesses that provide similar returns.

President Reagan has nominated Miss Elinor Hashim from Connecticut to the Commission and has indicated that upon confirmation, he will designate her as Chairman. I have already discussed with Miss Hashim how we can best work together to effect a smooth transition. My three years as Chairman of the Commission and as Chairman of the first White House Conference on Library and Information Services have been most gratifying. I personally feel that I have benefitted greatly, but the real beneficiaries have been the citizens of this country, who have been getting better library and information services and the decisionmakers who have been getting solid advice on information policy issues.

In summation, I wish to emphasize that the Commission is the only independent agency that advises both the Legislative and Executive Branches of the government on library and information policy. We serve as a liaison between you and the millions of Americans involved in the information industry and using the nation's libraries. We have a solid record as a cost-effective agency which has helped prevent the unnecessary expenditure of Federal dollars and has worked closely with state and local governments, and with the private sector to improve library/information services to the citizens of this country. Seven hundred thousand dollars a year is a very small investment in such a critical agency.

I am looking forward to continuing to serve as a Member of this non-partisan, independent Commission in its critical roles of advising the President an the Congress on information policy and continuing to improve the cost-effectiveness of library and information services for all Americans.

Thank you. I will be happy to answer any questions you may have.

STATEMENT OF BESSIE B. MOORE

My name is Bessie Moore, and I am vice-chairman of the Commission, elected to that position by the members.

Thank you, Mr. Chairman for this opportunity to speak from a somewhat different perspective from that of our Chairman. My credentials for this include: my service on the predecessor Advisory Commission, upon whose recommendation the National Commission was established; my continuous service on the National Commission since its inception; over half a century of involvement with libraries; four decades as a reader or advisor for a variety of Federal agencies; and 38 years on the Arkansas State Library Commission, the last twenty-nine as Chairman. I retired from that position in 1979.

My distress at the possibility of the Commission being zero-funded in fiscal year 1983 is intensified by the many years I, and so many others, have devoted to helping get it established and helping to make it one of the most cost-effective agencies in the government. The Congress established the Commission as a permanent, independent body with members appointed for staggered five-year terms, with the advice and consent of the Senate. In its eleven years of existence, the Commission has drawn on the wisdom of 27 Members from 25 different states, to say nothing of the hundreds of volunteers who have served on task forces and recommended policies to the Commission. It saddens me deeply to think that the citizens of our country could be deprived of the valuable and vital services that the Commission offers.

Mr. Chairman, to refresh my memory for preparing my statement, I went back to the testimony that was given before Congress in the Spring of 1969 when the bill to establish the National Commission was being considered. I was absolutely amazed at the degree to which the Commission has responded to the wide variety of the concerns expressed. My original thought was that I would have to point out that even with unlimited resources, we could not have addressed all of the problems in Library/Information Services identified at that time in only ten years, but I find that I don't need any excuses. Of a score of concerns that I raised during the 1969 hearings and three dozen expressed one or more times by others, I haven't found any that the Commission hasn't addressed in some fashion over the last decade. This does not, of course, mean that we are finished. We have addressed these problems, and in many cases, improved the situation, but it would be presumptuous to even think that they are solved. One of the points that I made, and which was reinforced by several others, is that circumstances are constantly changing, people's information needs are changing, and the institutions that serve them must continue to change to meet those needs. For this, a permanent body is needed to keep up with these changes, such as the impacts of technology on individuals and institutions, and to recommend actions that will help our citizens be as well informed as possible.

In preparing this testimony and reading the legislative history, I was reminded that in 1974 after the Federal Advisory Committee Act (FACA) became effective it was determined that the Commission was, indeed, a permanent agency and did not come under this Act except that any advisory committees appointed by the Commission would be covered by the FACA regulations. I was the Commissioner present at the hearing.

After ten years of providing leadership and registering significant accomplishments with a modest budget -- with remarkable success, I might add -- we are faced with termination at the very time when we are most needed and can make our greatest contribution. I don't have to tell you that we are in an Information Age -- that half of the employed people in this country are working in information-related activities -- that nearly half of the GNP is information-related. You probably read the same articles in Business Week and the Wall Street Journal that I read that underscore these facts. After building up credibility and support in the library/information and business communities and with state and local officials, we are now in a strong position to advise Congress and the President on the very important information policy issues facing us today, for example, the relationship between the public and private sectors in disseminating information.

I could spend the rest of the day simply listing the accomplishments of the Commission in networking, information policy, standards, education, training, research, and in providing leadership and advice, but I refer you instead to our solid record over the last decade. I do want to point out that our efforts have impacted every library and information resource, every corner of the nation, and citizens in every walk of life. We are called upon daily to provide service, advice, and assistance to individuals, members of Congress, agencies -- such as the Internal Revenue Service, the Office of Management and Budget, the National Library of Medicine, the General Accounting Office, and the Office of Personnel Management.

Let me turn for a moment to the future impact of a decision to end the activities of the Commission. In the first place, there would be no Federal agency with theprime responsibility for overseeing the implementation of the resolutions of the first White House Conference on Library and Information Services (WHCLIS). The investment of more than $7 million of Federal, state, and local funds and hundreds of thousands of hours of more than 100,000 citizens devoted to that Conference and the pre-conferences would be largely wasted. Secondly, a major private foundation has expressed its willingness to support a nation-wide project to improve library and information services to rural America. Without the Commission's assistance this project will not go forward.

Let me take a brief moment to tell you about the Rural America Program, one of the many ways in which the Commission has an impact on millions of Americans. This project would directly affect nearly half the population of this country -- those Americans living in rural areas. It began two years ago when a Western Consortium of five State Land Grant Universities was formed to revitalize the rural libraries as a community information and learning center. The leadership for each participating university is located at the school's community extension office. State library agencies are partners in the program. Simply put, the program's thrust is to co-locate extension offices and rural libraries, when feasible. These facilities will make full use of telecommunications, computer, videodisk, and other new technologies to make available the nation's informational and educational databases to rural communities at the local level. It is an example of local communities working with state institutions and the federal government -- integrating the newest technologies -- to provide information where it is needed.

A little over a year ago the Consortium leadership approached the Commission and requested the opportunity to present its program at a Commission meeting. The Commission fully and enthusiastically endorsed the project and provided staff support to help expand the project to other states, to enlist the support of the private sector, and to increase the program's visibility. This endorsement and assistance has opened a number of other doors for the Consortium. With the help of the Congressional Research Service, the Commission sponsored a roundtable discussion on rural America for Congressional staff and representatives of government agencies and the private sector. A number of foundations have been approached and have indicated a clear willingness to support a major five-year development program. Representatives of telecommunications and computer companies will work with the Consortium project officials, and USDA and Commission staff. The principles developed by our Public/Private Sector Task Force are already being applied to this program.

Curriculum materials for upgrading the knowledge and capability of rural librarians to use the new technology have been completed, tested, and are now ready for use. This work, which was also endorsed by the Commission, was funded by the National Agricultural Library.

This program may have been started without the Commission, but it would not have the national visibility and it would not have gotten to the level it is today without the active participation of the Commission. It is a grass roots program in which we are, more than anything else, the catalyst.

We have been approached by a major private foundation which wants the Commission to play a leadership role in identifying research needs for critical information policy issues. The foundation is suggesting funding that would exceed the annual appropriation for the Commission. Why? Because the Commission is seen as the only government agency with the responsibility, the expertise, the independence, and the credibility to identify research needs and to manage and undertake research in the information systems and policy area. NCLIS has taken a leadership role in information policies, for example, publishing the National Information Policy report prepared by the staff of the Domestic Council Committee on the Right of Privacy and transmitted by Nelson A. Rockefeller, Chairman.

This report was published in 1976. If the Commission is not there to direct these projects, the funds and the important research will not be forthcoming.

The recent White House Conference on Aging (WHCOA) passed a resolution (Number 371) pointing out that NCLIS was mandated by its enabling legislation to give attention to the needs of the elderly and urging the Commission to "move quickly to give leadership to the information needs of the elderly and ... encourage the use of volunteers in library activities in local communities." The Commission was already planning to establish a task force to identify both the particular needs of the elderly and the services they can provide as volunteers, and we would be happy to comply with this request from the WHCOA if we are still in existence to do so.

There can be no question that the role of the public library is changing. Many of the libraries of our large cities are in serious financial trouble. Libraries in rural areas are struggling to cope with and make most effective use of the new technologies. Many libraries are striving to expand their roles to include programs for senior citizens, adult literacy, and community information and referral. If every library is left to its own limited resources, there will surely be much wasted effort, duplication of costs, and uneven performance. The Commission plans to establish a task force to examine the problems and recommend ways of helping libraries to fill these new roles, harness the technology, and provide better services. These plans cannot be implemented if there is no Commission to establish the task force.

There are many similar programs related to education, networking, volunteers in library literacy programs, and a host of others that we are supporting I could describe. These, too, will end prematurely if Commission funding terminates.

As our Chairman has told you, we have been working closely with Congress on revisions to library and information legislation. We are actively involved in this major effort and expect to continue to work with both the House and Senate in FY 1983. Without funding we would not be able to finish this important work.

I would also like to point out that, in addition to these specific losses, zero funding of the Commission would deprive both the Legislative and Executive Branches of their objective "resident expert." It would deprive the nation of the leadership and focus for research and policy analysis in the field of library and information science, for which there is a continuing and increasingly urgent need.

We are not talking about large sums of money. If the Commission were to be funded at its full authorized level of $750,000, it would increase the budget by less than one ten-thousandth of one percent. And it would increase the private sector contribution to the nation by five times that much. It would also increase the opportunity to continue top-quality advice on crucial information policy issues from a cost-effective and unique agency. I urge you not to cut off the large benefits provided by the Commission for such a small amount of money.

Mr. Chairman, during my review of the testimony in 1969, another item came to my attention that is particularly pertinent. At that hearing, I told the story about a young couple who were having considerable budget trouble. So the husband issued an edict to his wife, "You must find a way to cut the budget."

Of course, she was very upset about this, but when he came home in the evening, she said, "I have found the answer and I will tell you at dinner."

And so, at dinner, he eagerly was awaiting the answer, and she said, "I have decided what we will do without. We will cut out black pepper."

This is about the relationship, as it relates to the total budget of the United States, that zero funding of the Commission represents. It will mean cutting out the black pepper, and it will also mean cutting out the spice that enlivens not only the educational process, but much of life, as well.

I couldn't close without repeating that story. Thank you.

BIOGRAPHICAL SKETCHES

CHARLES BENTON

PERSONAL:

Born:	February 13, 1931, New York
Married:	Marjorie Craig, 1953
Children:	Adrianne, 1955; Craig, 1957; Scott, 1958
Residence:	585 Ingleside Place, Evanston, Illinois 60201

EDUCATION:

Deerfield Academy, 1949
Yale University, 1953, B.A.
Graduate Studies at Northwestern University and National College of Education

PROFESSIONAL EXPERIENCE:

1953 - 1966	Encyclopaedia Britannica Films, Inc. (Producer and distributor of educational audio-visual materials)
1953 - 1955	Assistant in Production, then Producer
1955 - 1958	Administrative Assistant in Market Research
1958 - 1959	Teacher: Leave of absence to teach 5th grade Washington Elementary School, Evanston, Illinois
1959 - 1960	Administrative Assistant for Films, Inc. (Distributors of 16mm feature films, subsidiary of Encyclopaedia Britannica Films)
1960 - 1962	Illinois District Manager for EB Films and Films, Inc.
1962 - 1964	Vice President of Marketing
1964 - 1966	President, Encyclopaedia Britannica Films, Inc.
1966 - 1967	President, Encyclopaedia Britannica Educational Corporation
1967 - 1969	President, Fund for Media Research
1968 -	President, Public Media Inc.
1968 - 1977	President, Films Incorporated
1977 -	Chairman and Chief Executive Officer, Films Incorporated

CIVIC ACTIVITIES:

Trustee	The American Assembly
Trustee	American Federation of Arts
President	The William Benton Foundation
Trustee	Chicago Educational Television Association (WTTW-WFMT)
V.P.	Cinema Chicago
Trustee	University of Chicago
Board	Eisenhower Exchange Fellowship
Board	National Citizens Committee for Broadcasting
Board	Visual Education Center, Toronto
Board	Donor's Forum
Advisory Board	Action for Children's Television
Advisory Board	Citizen's Exchange Corps
Board of Visitors	University of California, Los Angeles
Member, Emeritus	Board of Trustees, Broadcasting Foundation of America

CLUBS:

Arts Club of Chicago
Metropolitan Club of Washington, D.C.
The River Club of New York City

Bessie Boehm Moore, Vice Chairman, NCLIS. Commissioner since 1971

Degrees:

BSE State College of Arkansas, Conway, Arkansas
MA University of Connecticut, Storrs, Connecticut

Experience:

Member, Arkansas Library Commission, 1941-1979 (Chairman, 1950-1979)

National Advisory Commission on Libraries, 1966-68

Executive Director, Arkansas State Council on Economic Education, State Department of Education, 1962-1979 (Executive Director Emeritus, 1979-)

State Coordinator of Environmental Education, State Department of Education, Little Rock, Arkansas, 1970-74

State Supervisor of Economic Education, State Department of Education, Little Rock, Arkansas, 1962-74

State Supervisor of Elementary Education, State Department of Education, Little Rock, Arkansas, 1958-65

Honors:

Arkansas Woman of the Year, 1952

Awarded Honorary Doctor of Laws Degree, University of Arkansas, 1958

Appointed in 1961 by Secretary McNamara to the Defense Advisory Committee on Women in the Services (DACOWITS), 1961-64

Only woman speaker at Southern Governors Conference at White Sulphur Springs, West Virginia, August 1963

Awarded Distinguished Service Award, American Association of University Women, May 1966

Distinguished Alumni Award, University of Arkansas, 1974

Member, Board of Directors, First National Bank of Little Rock, 1971-1979

Member of the Board, Arkansas Foundation of Associated Colleges, 1975-1979

Awarded Honorary Doctor of Laws Degree, University of Arizona, 1977

Arkansas Citizen of the Year, 1978

Board of Trustees of the University of Arkansas named the Economic Education Center of the University, the Bessie Boehm Moore Economic Education Center, 1979

Awarded Honorary Life Membership (the highest honor given) by the American Library Association for 50 years of service, 1980

Toni Carbo Bearman

Education:

PhD - Library/Information Science, Drexel University, 1977
M.S.- Drexel University, 1973
A.B.- English-American Literature, Brown University, 1969

Professional Experience:

11/80 - Present	- Executive Director, National Commission on Libraries and Information Science
1979 - 1980	- Special Consultant, The Institution of Electrical Engineers
1974 - 1979	- Executive Director, National Federation of Abstracting & Indexing Services (NFAIS)
1973 - 1974	- Consultant, NFAIS World Inventory of Abstracting & Indexing Services
1971 - 1972	- Research Assistant and Project Coordinator, Drexel University Graduate School of Library Science
1967 - 1971	- Supervisor, Physical Sciences Library and library assistant Biological Sciences Library, Brown University
1966 - 1967	- Subject Specialist, Engineering Library, University of Washington Library

1963 - 1966 - Library Assistant, Physical Sciences Library, Brown University

1962 - 1963 - Bibliographic Assistant, Library, Mathematical Reviews, American Mathematical Society

Research: Director several research projects on scientific and technical literature.

Professional Society Activities:

American Society for Information Science: Councilor-at-large, 1978-Present; Chairman, Delaware Valley Chapter, 1976-77; Member and Council Liaison of the International Relations and Networking Committees, 1979-Present; Chairman, Intersociety Cooperation Committee, 1976-78; Chairman, Special Interest Group on Library Automation and Networks, 1978-79, and Representative to the Network Advisory Committee.

Special Libraries Association: Chairman, 1978 Conference Committee, Documentation Division, 1977-78; Member, Special Projects Committee, Documentation Division, 1987-77.

Association of Information and Dissemination Centers: Member, Executive Committee (equivalent to Board), 1976-79.

American Society of Indexers: Member, Board of Directors, 1978-79.

American National Standards Institute, Committee Z39: Vice Chairman, 1977-78; Chairman, Subcommittee 1 Program and Planning, 1977-78.

Center for Literacy: Board of Directors, 1976-78.

American Association for the Advancement of Science: Committee Council Delegate, Section T, 1978.

Editorships: More than 45 articles and technical reports in professional literature, and on the Editorial Board of two major library publications.

INTRODUCTION OF ASSOCIATES

Mr. BENTON. Before introducing my associates—one of whom needs absolutely no introduction, quite clearly—I just want to say thank you so much, Senator Percy, for those marvelous comments. It's just the roll of the dice that your daughter preceded, in her role as chairman of CPB, this panel and my role here as Chairman of the National Commission. We're both, quite clearly, trying to carry on in the example and the model of our parents, and our fathers in particular. It's a proud heritage for us both. We're very pleased to try to carry on the work that you have started in our own way. It gives me special pleasure and pride to be here and have this introduction that you have so generously made this afternoon. Thank you very much.

Well, first let me introduce Toni Carbo Bearman. Dr. Bearman is Executive Director of the National Commission, and has been so now for about 15 months. It seems I can't remember the National Commission without Toni at its head. She's made so much of an impact in the last 15 months.

And Mary Alice Hedge Reszetar, Associate Director of the National Commission, who has been with us since the very beginning, and is our corporate memory on staff, if you will. We have our corporate memory on the Commission itself, which is Bessie, who was here before the Commission began, when it was an advisory commission under President Johnson, and Mary Alice who is her counterpart on the staff.

NCLIS FUNDING

And Douglass Price, our Deputy Director of longstanding and distinguished service.

Perhaps we have these larger numbers—I was interested in Senator Bumpers' reference to our budget being an insignificant amount. And I heard the Corporation for Public Broadcasting talking about their very insignificant sums of $150 million. We're almost embarrassed to take the time of this panel to come in with a budget of $700,000, which is as David is to Goliath with the Corporation for Public Broadcasting, regardless of how small that amount is, relatively speaking.

But despite this relatively small amount, while we do not have power, as Senator Percy suggested, I think we are making an impact, and we are at peak strength right now in our 12-year history, going back to 1970 when we were created under the Nixon administration.

I am pleased—I'll proceed with the summary of my statement and then pass to Bessie Moore. We will then be delighted to entertain any questions you may have.

SUMMARY OF CHAIRMAN'S STATEMENT

I am very pleased to be here today to report to you what I believe is the most productive year in the history of the Commission, and to present our plans to you for fiscal year 1983.

In this fiscal year alone, the Commission, through the donated services of more than 6,200 hours from 61 top-level experts in the country, has completed the work of three major task forces, all outgrowths in one way or another of the first White House Conference on Library and Information Services, of which I was also the chairman in November 1979.

A fourth task force is drafting its final report this month. In addition, we have completed a major project with the Federal Library Committee and the Library of Congress on intergovernmental library cooperation.

We have also taken significant steps to bring together key officials to improve the dissemination of Federal information. We estimate that through our work, plus the contributed efforts of the private sector, we have saved the Government and the taxpayers several times our total budget.

ROLES OF NCLIS

We are unique in the Federal Government; the only independent agency to advise both the executive and legislative branches on library and information policy. We play very significant roles for the Government and for the library and information users in this country:

One, we serve as a resident expert for all branches of the Government in the library and information field. With information activities comprising almost half of the gross national product, this is a crucial area of expertise.

Two, as an independent agency, we serve as an honest broker bringing together individuals from all branches of Government with those at the State and local levels and with representatives from the private sector.

Three, through our extensive network of contacts with individuals and associations in the library and information field, we are able to provide a forum for the entire community.

And, four, we serve as a catalyst identifying problems, suggesting solutions, and making things happen.

Now specifically, we've been working closely with Members of Congress to review existing library and information legislation. At the request of the chairman of the Subcommittee on Postsecondary Education of the House Committee on Education and Labor, NCLIS assisted with their oversight hearings on the Library Services and Construction Act, LSCA. Our major concerns in this area have been to determine the appropriate role of the Federal Government, to make certain that the needs are identified and met, and to insure that the Government gets maximum return on its approximately 5-percent share of public library budgets.

Many of the 64 resolutions from the White House conference relate directly to the improvement of this Library Services and Construction Act legislation, which of course is the major support legislation for public libraries, and is also being zeroed out in the current Reagan budget request. It would be a shame not to both continue that program and take advantage of this White House conference national needs assessment process in which over 100,000 citizens participated and on which $7 million was spent to enable Congress and the people to get the most from their money.

In addition, the Commission continues to serve as the resident expert by assisting Members of Congress and their staffs in answering questions from their constituents.

PLANS FOR FISCAL YEAR 1983

We also plan to continue the work with Congress on three other topics of considerable concern: One, the provision of library and information services to senior citizens.

Bessie attended the White House Conference on Aging. She is our liaison in this area. In fact, our legislation calls for a representative of the senior citizens' group, for which Bessie only qualifies in age, not in spirit.

Two, harnessing new technology to improve services to citizens in rural areas, where nearly one-half of our population lives; and three, the eradication of illiteracy.

What I believe is our most significant accomplishment this year is the report of the NCLIS Task Force on Public/Private Sector Relations. This is a major milestone in the effort to define the role of the Federal Government in disseminating information paid for by the taxpayers and to improve the handling of information resources by the Federal Government.

Relating to your small business bill that you've introduced, this is exactly the kind of a principle that we were referring to and trying to hammer out in this public/private sector task force.

In its role as honest broker, the Commission held monthly meetings of senior officials in both the executive and legislative branches to seek ways to improve the dissemination of Federal information. These meetings have already saved the taxpayer hundreds of thousands of dollars by avoiding duplication of effort through the timely sharing of information.

During fiscal year 1983, we will be continuing these meetings, pursuing further our discussions of the use of standard numbers, and exploring, in addition, the roles of the public and private sectors, methods for saving money in the dissemination of information paid for by taxpayers, and other information policy issues.

A major program in this area will be the implementation of the recommendations in the public/private sector report, which will be presented to the full Commission at its spring 1982 meeting.

The Commission continues to provide assistance to other agencies, to the OMB, to the GAO, to the Department of Education, and the Internal Revenue Service, to name a few.

A major thrust of the Commission activities this year has been devoted to implementing the resolutions of the White House Conference on Library and Information Services, which was an investment of the time of more than 100,000 people nationwide, in pre-White House conferences, 57 State and territorial conferences, the National White House Conference in Washington, D.C., at a cost of more than $7 million in State and Federal dollars.

RURAL AMERICA

The Commission is carrying out its mandated responsibility to study and analyze the informational needs of rural America by working closely with the National Agricultural Library, and also by giving support and guidance to the program of the Intermountain Community Learning Information Center project in Colorado, Idaho, Montana, Nevada, Wyoming, and Utah.

We have worked closely with the White House Conference on Aging, as I mentioned earlier.

In addition, in our efforts for combating illiteracy, we continue to work with individual library and professional trade associations.

As the only independent Federal agency working with State and local community libraries to use technology for resource sharing, and also to identify the appropriate roles of the Federal, State, and local governments, NCLIS has been called upon frequently to work with individuals and associations from all parts of the country. We have been requested most recently to provide a forum to discuss a research agenda for library and information science for the 1980's.

FIVE MAJOR INITIATIVES

We also provide briefings to library and information specialists from other countries, and we are called upon to participate actively in national and international professional meetings and conferences.

The five major initiatives build upon the work of the four task forces, the recommendations of the White House Conference, and the needs and concerns of citizens of this country. These are five key initiatives for fiscal 1983. They also implement the administration's desire to make things more cost-effective, in partnership with the private sector and volunteerism. These initiatives are:

No. 1, development of cost-effective and cost-beneficial programs for the dissemination of Federal information.

And, parenthetically, here is a public library system that is in place and can be much better utilized for the delivery of this Federal information. Many agencies of the Federal Government are setting up separate distribution mechanisms to get their federally sponsored information out to the people when there is a mechanism right in place, the many local public libraries, that can do this job and do it much more effectively than it's now being done.

No. 2, development of specifications for revised legislation for library and information services. Here again, drawing on the resolutions from the White House conference, we've got a key opportunity here to help the Government get more for the money that it's investing through this legislation.

No. 3, appropriate application of technology for library and information resource sharing, which is a central point because it's the most effective utilization of the resources that are there, in place, through applications of technology and more effective resource sharing.

No. 4, examination of the changing role of public libraries, both urban and rural, and the development of ways to assist them in harnessing the new technology, increasing cooperation with the private sector, and increasing the participation of more volunteers for special programs, for example, combating illiteracy and to improve services.

The public libraries, of all the library sectors, are the most endangered species. The school libraries have a school base, the university libraries have their university base. But the public libraries really need to redefine and rethink some of their priorities in the struggle for survival in today's economic climate. This is a key role that we can perform in helping them do that.

No. 5, identification of the library and information needs of senior citizens, the rurally remote and the development of programs to meet these needs effectively and efficiently.

OMB RECOMMENDATION

As you know, the Office of Management and Budget has recommended zero funding for our Commission in fiscal year 1983. I believe this would be a major error that would have an adverse impact on the citizens of this country. We believe if we had been granted an appeal to the President, he would have recognized the importance of continuing this agency. The total dollars, $700,000, are a very small price in return for the savings NCLIS has effected and for contributions by the private sector.

In addition, the Commission anticipates funding from the private sector in excess of its total budget to undertake needed research projects and to provide information to assist in recommending policy.

As a businessman and as chairman of the world's largest distributor of films and video for education, and as president of a private foundation devoted to the area of communications, I have been most impressed by the enormous return on investment of this tiny, though important, agency. I know of few, if any, businesses that provide similar returns.

My 3 years as chairman of the Commission and Chairman of the first White House Conference on Library and Information Services has been most gratifying. I personally feel that I have benefited greatly, but the real beneficiaries have been the citizens of this country, who have been getting better library and information services, and the decisionmakers, who have been getting solid advice on information policy issues.

I wish to emphasize that the Commission is the only independent agency that advises both the legislative and executive branches of the Government on library and information policy. We serve as a liaison between you and the millions of Americans involved in the information industry and using the Nation's libraries.

We have a solid record as a cost-effective agency which has helped prevent the unnecessary expenditure of Federal dollars and has worked closely with State and local governments, and with the private sector to improve library and information services to the citizens of this country. $700,000 a year is a very small investment in such a critical agency.

Thank you. And I'll be happy to answer any questions you may have.

SUMMARY OF VICE CHAIRMAN'S STATEMENT

Senator RUDMAN. Ms. Moore, I believe we'll go to your testimony now, and then perhaps have some questions.

Ms. MOORE. Thank you, sir. Thank you for your kind remarks.

Also I would like to say to Senator Bumpers, an interesting part of that story he told was the fact that I was a State employee at the time I opposed him. It's not every Governor who would tolerate opposition for his principal program from a State employee without some kind of retribution. There was none. I had freedom of speech to speak as I thought best. The Governor finally decided that we were right, and he changed his program. But I think that's a great tribute to a public official, that he leaves to even a mere State employee working under him, the privilege to disagree, which is very important in our society.

I guess the first thing I'd like to say is I'd like to get a little bit of testimony in here for PBS. I've been closely associated with our Arkansas station since its inception, and it has served the State in so many ways, besides in cultural ways, in economic ways and other ways. It's been my privilege to help them raise funds, and I shall continue so to do. But next to my own agency—I'm talking about NCLIS—I can't think of anything that I'm so concerned about as I am public broadcasting. And I'd like to just enter an endorsement and hope that they are funded.

Mr. Chairman, I think I'll speak first to the possibility of zero-funding. Of course it's intensified by the many years that I, and so many others, have worked to get this agency established, because it took us more than 20 years of effort as the library community had long recognized the need for an agency to do the kind of coordination and provide the kind of leadership that the National Commission has provided in its short life.

ESTABLISHMENT OF NCLIS

The Congress established the Commission as a permanent, independent body with members appointed for staggered 5-year terms, with the advice and consent of the Senate. In its 11 years, it has drawn on the wisdom of 27 Members from 25 different States, to say nothing of the hundreds of volunteers who have served on task forces and recommended policies to the Commission. It saddens me deeply, then, to think that the citizens of our country and the Congress could be deprived of the valuable and vital services that the Commission offers.

In order to refresh my memory in preparing for this statement, I went back to the testimony that was given before Congress in the spring of 1969, even my own testimony at that time, when the bill to establish the National Commission was being considered. I was absolutely amazed at the degree to which the Commission has responded to the wide variety of the concerns expressed.

My original thought was that I would have to point out that even with unlimited resources, we could not have addressed all of the problems in library and information services which were identified at that time. Of a score of concerns that I raised during the 1969 hearings, and three dozen more expressed by other people too, I found that the Commission has addressed in some fashion every single one of those issues over the past decade.

That doesn't mean, of course, that we're finished. It would be presumptuous to think that all of these situations are solved. One of the points that I made, which was reinforced by others, is that circumstances are constantly changing and people's information needs are changing, and institutions that serve them must continue to change to meet these needs.

For this reason, a permanent body is needed to keep up with these changes, such as the impacts of technology on individuals and institutions, and to recommend actions that will help our citizens be as well informed as possible.

FACA NOT APPLICABLE

Also in preparing this testimony and reading the legislative history, I was reminded that in 1974, after the Federal Advisory Committee Act, FACA, became effective, it was determined that the Commission was indeed a permanent agency and did not come under this act except that any advisory committees appointed by the Commission would be covered by the FACA regulations. I was the Commissioner present at this 1974 meeting.

I raise this point because I think that there may be some misunderstanding, even within the administration, about this agency. It's clearly the legislative intent that it was to be protected from the vagaries of politics of the time or the problems of the time. If the Commission were not funded, the law establishing it would still be on the books and still be there, because it was established as a permanent agency.

I could spend the rest of the afternoon simply listing the accomplishments of the Commission in networking, information policy, standards, education, training, research, and providing leadership and advice, but I'm sure you've heard enough to know that we have had a solid record over the past decade.

COMMISSION IMPACT

I would point out, though, that because of our efforts, we have impacted every library and information resource, every corner of the Nation, and citizens in every walk of life. We are called upon daily to provide service, advice and assistance to individuals, Members of Congress, agencies, such as the Internal Revenue Service, the Office of Management and Budget, the National Library of Medicine, the General Accounting Office, the National Bureau of Standards, and the Office of Personnel Management, and so on.

COMMUNICATION WITHIN OMB

I might particularly say that I think that it is sort of interesting that one side of the Office of Management and Budget uses our services and seems to think that we're doing a great job, while the other side recommends us for zero-funding.

Senator **Rudman**. Do you think there's a chance that the two sides don't talk to each other?

Ms. **Moore**. I think that might be. [Laughter.]

I thought that might be something the committee would want to ask. At least the right hand doesn't know what the left hand is doing over there, because we do have some fine support on the policy side.

RURAL AMERICA PROGRAM

Let me tell you, as an example, about our ability to spotlight an important change or any kind of innovation that might be applicable to other parts of the country. Let me take a minute to tell you about the rural America program, one of the many ways in which the Commission has made an impact on millions of Americans.

This project would directly affect nearly half the population of the country—that is, those people living in rural areas. It began 2 years ago when a western consortium of five State land-grant colleges and universities was formed to revitalize the rural libraries as community information and learning centers. The leadership for each participating university is located at the school's community agriculture extension office. State library agencies are partners in the program.

Simply put, the program's thrust is to colocate the agriculture extension offices and rural libraries, when feasible. These facilities would make full use of telecommunications, computer, videodisk, and other new technologies to make available the Nation's informational and educational data bases to rural communities at the local level. It is an example of the local communities working with State institutions and the Federal Government, integrating the newest technologies to provide information where it is needed.

A little over a year ago the consortium leadership approached the Commission and asked for an opportunity to present its program at a Commission meeting. The Commission heard the report and they were exceedingly enthusiastic about it. This endorsement and assistance provided by the Commission has opened a number of doors for the consortium. With the help of the Congressional Research Service, the Commission sponsored a roundtable discussion on rural America for congressional staffs and representatives of Government agencies and representatives of the private sector. A number of foundations have been approached and have indicated a clear willingness to support a 5-year development program. Representatives of telecommunications and computer companies will work with the consortium project officials, the USDA and the Commission staff. The principles developed by our public/private sector task force, mentioned by Mr. Benton, are already being applied to this program.

I'd like to say that this work was funded originally by the National Agricultural Library, and this is just one example of the Commission's work, as it's mandated in its legislation to work with all Federal agencies to improve information services.

This program, of course, was started without the Commission, but it would not have the national visibility, and it would not have gotten to the level it is today without the active participation of the Commission. It is a grassroots program in which we are, more than anything else, the catalyst.

Obviously we're going to have to change. There's going to have to be a great change made in library programs in this country, as Mr. Benton mentioned about the public libraries.

COOPERATION WITH POSTAL SERVICE

I remember many years ago, when I was first concerned with rural libraries in Arkansas, that many of them—as I'm sure they were in other rural States—many of the branch libraries were at the post office and the postmaster volunteered the time to check out books to the people. During some of our work here we've had a meeting or two with the Postmaster General and the Post Office Department, talking with them about the possibilities of cooperation in this field. As you know, they're closing a great many local post offices. The time may come again when there might be a marriage in this respect, going back to former days.

Right now in Arkansas the bookmobile program is under stress because, even though we have a large geographic area, 2.5 miles to the gallon on the bookmobile eats up the budget pretty fast. Consequently an alternative is going to have to be found, in some way or other, to get information to people, and this is where, of course, technology comes in.

The point I'm making with this is that the Commission gives leadership and offers visibility to various organizations and gives the kind of direction needed for people to think about and take advantage of, innovative projects which may have already been started.

I guess I'd have to say, too, that I'm very much concerned about the outcome of the White House Conference on Aging. It was mentioned I did attend that. There's a great deal of information needed by the elderly these days that we didn't think about in earlier days.

For example, one of the problems that elderly people face is information on reaction from drugs, prescribed drugs. With all the new medicines that there are now, it's very hard to know what kind of reaction two drugs may have, one against the other. I'm hopeful that this Commission is continued so we can give the leadership that we are mandated to give under our public law to work out some sort of solution. We could have a task force to examine these questions and recommend some solutions to our senior citizens that hopefully could be worked out, perhaps through the community information center library or some other way. We're hoping to establish a task force on information needs of seniors, as I mentioned.

1969 TESTIMONY

Mr. Chairman, during my review of my testimony in 1969 I'll have to tell you one little story that I told then, and that is about a young couple who were having trouble about their budget, and the husband said to the wife, "You simply must find a way to reduce our budget." So she finally told him she had found a way and she would tell him at dinner. At dinner she said to him, "We'll cut out the black pepper, that's how I'll reduce the budget."

This sort of reminds me of here today, our little amount of money is sort of like cutting out the black pepper from the Federal Government, even though not literally so, but it would also cut out the spice that enlivens not only our educational process, but much of life as well.

GEORGE WASHINGTON FAREWELL ADDRESS

As my final statement I would like to say that in preparing for another speech I recently had occasion to read the farewell address of George Washington. It seems to me that it seems popular these days to refer to historical figures and to call on their words of wisdom to relate to our own time. I read this from George Washington's farewell address:

> Indignantly frown upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link the various parts.

It seems to me that our Commission is doing exactly what George Washington would intend should be done. We're trying to get the States to work together in cooperative programs across State lines through State compacts; we're trying to encourage and to find innovative ways to help the States, and the Federal Government as well, share the limited and dwindling resources so that the various parts of the country and the various States will not be in confrontation with each other.

Thank you, Mr. Chairman.

Senator RUDMAN. Thank you very much for your testimony.

I have several questions. And I think your testimony has covered some of the substantive matters that the Committee wished to inquire on.

LACK OF SUBSTANTIVE DISCUSSION WITH OMB

I'm particularly interested in how we got to where we seem to be today. And directly, I would like to ask you, Mr. Benton, what opportunity were you given and in what forum, and how much time to discuss the substance of what you do, such as you have given to us here today, with OMB?

Mr. BENTON. I think the word is that deadlines were set in terms of a matter of hours, I mean very short deadlines. We were never given any written answer to our appeals at various levels as it went up the appeals process except a verbal, "No." We were never given any reasons as to why these appeals were being denied.

In short, there's never been any discussion. We've followed the process and deadlines as set forth by the budgetmakers in the OMB, and despite much round-the-clock and weekend work—we have made all their deadlines which they have put us on very, very short notice—there's been much hardship on the time front. In fact, when the Government was shut down for a day for lack of appropriations, the entire staff was there working on a critically needed budget answer.

In short, there's been no discussion with the administration or the President and no opportunity to present our case, really.

Senator RUDMAN. In other words, if I understand your answer correctly, the process—and I'm familiar with the process, the appeal process—you have in fact lived up to your deadlines, you have sent these reports—I'm sure some of them reasonably voluminous in size and——

Mr. BENTON. Yes, sir.

Senator RUDMAN [continuing]. OMB has evaluated them and has chosen to continue its stance, but there has not been any substantive discussion between you and any of your staff, any of your board, with members of OMB to tell them specifically how you feel and why you feel that way?

Mr. BENTON. Nothing in writing and nothing verbally more than to say, "No."

Senator RUDMAN. Well, of course, it's easy for me to be very critical, and I am, of that process. I think the problem, of course, to be fair all the way around, is with the kind of constraints the budget act imposes, and with the size of the Federal budget, there obviously are millions of worthwhile programs that do not have an opportunity to be defended in any kind of aggressive, articulate way. And that, of course, is why we have several branches of the Government.

This one I expect is at least going to listen carefully to what you say.

DIRECT IMPACT ON LIBRARIES

Specifically can you give me a direct impact on the libraries in Illinois, Arkansas, and New Hampshire if, in fact, we were to discontinue this program? I mean at what point would people realize that this agency was no longer there, that we've lost them? Or is it more the other side of the coin, there are some things that they could have had and they just never realized it?

Mr. BENTON. Well, let me just make two brief comments.

Going back to your first question, the sad irony that was referred to in our testimony about the left hand and right hand is that while we are being of, I think, considerable service to the management side of the OMB, the budget side and the management side apparently are not talking to each other, because we have made considerable contributions in helping with the implementation of the Paperwork Reduction Act, and also the public/private sector task force.

It looks as though there's going to be an agencywide meeting of heads of information, the information coordinators that the OMB—the "M" side of OMB—has set up, using the public/private sector task force report as the basis for that discussion. We are really helping a lot the management side, but apparently the management side and the budget side don't even talk, there seems to be no communication. That is a tremendous frustration.

Now as to your second question from the libraries' point of view, my colleagues could give you many answers to that question. But I think the important point to remember is that the primary role of the Commission is to advise Congress and the President. In focusing on advising Congress and the President on public policy options for libraries and information science, the main thrust of our program has been with the legislative and the executive branches.

Of course, we are relating also to the public and the profession. The most visible evidence of that public relation, if you will, was the White House conference. That did involve 100,000 people in this huge needs-assessment process for improved library and information services.

If we get cut off at this point we're not going to be able to follow up on those 64 resolutions that the government, the Federal and State government, paid something in excess of $7 million for to try to work through the process. People who participated in that are going to say, "Well, we participated in this White House conference, worked hard to make these recommendations, and now the Government is just phasing everything out." So I mean, why bother? It's very disillusioning to be faced with that kind of situation.

Many other illustrations could be given. But that's some of how we impact on the public and, of course, the profession.

And, Toni, you might want to say some things about our relations to the profession very briefly.

COMMUNITY INFORMATION AND REFERRAL

Ms. **BEARMAN**. Thank you. Mr. Chairman, I might just add a few comments to our chairman's comments. In terms of the impact on an individual public library, let me just specify a couple of examples of the problems on which we are working.

One of our task forces, which is now drafting its final report, is looking at the changing role of public libraries in community information and referral, looking at how those libraries can examine the resources outside their four walls, senior citizen programs, literacy programs, day care, et cetera, and provide information to the citizens of the country.

This task force report is eagerly awaited by the library community.

Another major area is the area of resource sharing and networking. More than 82 percent of the public libraries in this country serve populations of fewer than 25,000 people. These librarians do not get to go to big national meetings and have the opportunity to read all of the professional literature. They have to rely on an agency such as ours to help them find out what is happening.

In my first year with the Commission I was privileged to visit 16 different States, and I've been invited to that many more within the next year, at the invitation and paid for by the State library groups because they want to know what is happening in Washington and what is happening elsewhere so they can interact in a positive way.. We help to serve as an exchange of information for them and many others.

Another important area is the literacy programs. We are not funding training people to help adult illiterates learn how to read and write, but we are able to serve as a catalyst.

At our invitation Mrs. Bush has taken on, as part of her literacy effort, visiting public libraries around this country to help encourage volunteers to work in libraries.

We are able to bring together State governments with the National Center for Educational Statistics, with Literacy Volunteers of America, different groups at the State, Federal, local level, and the private sector associations.

I think that it would be of interest to you—it was very heartwarming to all of us—to get resolution after resolution passed by the American Library Association, representing more than 39,000 librarians in this country, the trustees of those libraries, Friends of the Libraries, who are ordinary citizens working to support the local public libraries, and the Special Libraries Association.

The Chief Officers of State Library Agencies in Denver voted that their two highest priorities for this year are the funding for LSCA and the Commission. They want us to continue and they strongly support us. They each individually feel that we're having a positive impact on their libraries.

Senator RUDMAN. Well, I want to thank you all very much for coming here and appearing before the subcommittee. You may be assured that we will look at your problem very closely.

COPYRIGHT ACTIVITIES

Ms. MOORE. Mr. Chairman, may I tell you one final thing?

Senator RUDMAN. You certainly may.

Ms. MOORE. You know, the role of the Commission in being of help to the Congress I think is very important. I go back far enough to remember this—Mary Alice and I do, the others on the Commission and staff would not remember—but I'd like to relay to you the role that the Commission played when the copyright revision law was before the Congress. There was great opposition. There were two sides: the publishers on one side; and the library community on the other. This was related to library photocopying. The two sides simply could not get together. It was very hard for the Congress.

The Commission arranged for meetings of the two groups to try to bring them to a workable solution. Guidelines were prepared that helped the Congress resolve the impasse. The Commission also suggested an amendment be considered which would require a study of the photocopying provisions every 5 years.

In other words, these two groups were shouting at each other, but neither had any hard facts. Through the efforts of the Commission, the Congress was able to resolve the tough issue before it because it accepted the compromise suggested by the Commission.

In many ways we were assistants to both the Congress and the others.

INTRODUCTION OF MRS. JULIA LI WU

Mr. BENTON. If I may take 30 seconds to introduce one more person, Mr. Chairman. We have a new Commissioner-Designate by President Reagan present at this hearing. Here's another illustration of where it seems that the left hand and the right hand are not speaking. We have the appointments process rolling forward, appointing new Commissioners to the Commission on the one hand, which the budget office is zeroing out, on the other hand. Mrs. Julia Li Wu is in the back of the room. She is from California and is, in fact, a former Commissioner, I believe appointed by President Nixon.

We are most happy to have her back again in our ranks. Her expertise is in school libraries. We haven't had a school library commissioner for some time. We're delighted that Julia is able to be here. I believe she has just come from the White House at an all day discussion by women appointed in the Reagan administration. We hope that this woman in the Reagan administration will be serving on this Commission for many years to come.

Senator RUDMAN. Well, maybe since the new designee knows the President, she might inform the President about what his Office of Management and Budget is doing to the agency to which she is appointed, which his OMB is recommending go out of business.

Thank you very much.

Mr. BENTON. Thank you, sir.

[The following statement was submitted by the Hon. Lowell Weicker for inclusion in the hearing record:]

STATEMENT OF HON. LOWELL WEICKER, U.S. SENATOR FROM CONNECTICUT

I would like to take this opportunity to speak out in opposition to the proposal to zero-fund the National Commission on Libraries and Information Science in fiscal year 1983. The National Commission on Libraries and Information Science has been charged with the responsibility of assisting the President and Congress in the development and implementation of a national plan and policy to meet the country's library and information needs.

A quick stroll around the Halls of Congress will convince anyone that we are inundated with paperwork and information. Every desk is piled high with journals, articles, reports, and so forth. The National Commission has done an outstanding job in assisting the Federal Government in improving the quality of, not only the information that it receives, but the information that it sends out as well.

The National Commission assists the Library of Congress in developing methods to best utilize the latest technology in information systems. To cite just one example, the Commission recently obtained information on a videodisk system used in Europe that will have a significant impact on the U.S. information industry. We will now be able to access information from European publishers and journals that we could not before obtain.

The Commission is also carrying out its mandated responsibility to assist the informational needs of rural America by upgrading the capability of rural libraries in the utilization of the newest information technologies.

We are not talking about large sums of money. If the Commission were to be funded at its full authorized level of $750,000, it would increase the budget by less than one one-thousandth of 1 percent. Failure to provide this would deprive our country of a great resource. I strongly support the restoration of full funding for this program.

PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BEHAVIORAL RESEARCH

STATEMENT OF ALEXANDER MORGAN CAPRON, EXECUTIVE DIRECTOR

SUBCOMMITTEE PROCEDURE

Senator RUDMAN. We now move to the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. We have Mr. Alexander Morgan Capron, your executive director.

Would you like to proceed with a summary of your statement?

Mr. CAPRON. Thank you, Senator Rudman.

I am pleased to represent the Commission today in the absence of our chairman, Morris B. Abram, who had a prior commitment in New England that he could not change on short notice.

Last year in the interest of efficiency and simplicity, we submitted a 15-month budget request for fiscal year 1982 and the first 3 months of fiscal year 1983 to carry the Commission through its statutory existence, ending December 31, 1982.

We have been asked to appear this afternoon, although we do not have any fiscal year 1983 request before you, in order to bring you up to date on the Commission.

I will review our activities, recommendations, and budget briefly, and will provide for the record a copy of the Commission's annual report for fiscal year 1981 which was submitted to the President and Congress on December 15, 1981.

This past year has been a busy one for this Commission, to say the least. Rather than hold our studies for completion at the end of our statutory period, we have released them as they were completed. Two reports were published during the past year. Several others are approaching final form, and the remainder will be issued during the next 10 months.

Since we testified before this subcommittee last March, the Commission has held 1 3-day and 10 2-day meetings. These monthly meetings will continue for the remainder of the year. Indeed, this afternoon I am briefing President Reagan's new appointees who are coming to town for their first meeting tomorrow and Saturday.

All of our meetings were open to the public, and attendance has ranged from about 25 to 200 people. During the course of the year, hearings and discussions were held on all nine subject matter areas under study.

DEFINITION OF DEATH

The activity that received the greatest attention, with front page national coverage, was the Commission's recommendation for a uniform statutory definition of death. The report was widely distributed, not only within the Federal Government, but to State legislators and administrators in the health fields, and to members of professional and law reform bodies.

The proposal, which says that death occurs when there is irreversible cessation of all brain functions, including those in the brain stem, or irreversible cessation of circulatory and respiratory functions, is jointly approved and sponsored by the American Medical Association, the American Bar Association, and the National Conference of Commissioners on Uniform State Laws. It has been enacted already in four States and the District of Columbia and is pending in several others.

Action has yet to be taken in Congress, however, on the Commission's recommendation that the statute be incorporated in the United States Code, to apply in areas under Federal jurisdiction covered by article 1, section 8 of the Constitution.

RESEARCH WITH HUMAN SUBJECTS

Our authorizing statute requires a report every 2 years on the adequacy and uniformity of Federal rules and policies for the protection of human subjects in research. In its first biennial report on protecting human subjects, which was submitted on December 30, 1981, the Commission made nine recommendations.

In the rules themselves, the Commission recommended a number of adjustments to recognize the flexibility needed by research institutions, particularly in responding to allegations of wrongdoing or other problems.

Although the Commission did not propose any major changes in the substance of the rules, it did recommend one major organizational change, that a uniform code of regulations be adopted based upon the present rules of the Department of Health and Human Services, and that HHS become the lead agency in this field. This consolidation would eliminate hundreds of pages of needless regulations by the 23 other Federal entities which are largely but not exactly duplicative of the HHS rules, thereby simplifying both local compliance with the rules and Federal oversight of the system.

These recommendations have already been greeted favorably by a number of the affected agencies, such as the Defense Department and the Central Intelligence Agency, and we are hopeful for a favorable response from HHS. We are currently working with officials at OMB to set the process of governmentwide coordination in motion.

For its second biennial report, which will actually, of course, be completed in 1 year, the Commission is evaluating site visits by peers from other institutions as a method of improving the performance of institutional review boards and enhancing the quality of Federal monitoring.

In addition, a guidebook is being prepared for members of IRB's to assist them in understanding the important policies and principles underlying the regulations governing human research.

The Commission agreed, at its first meeting, to take up on behalf of HHS the question of providing compensation for research-related injuries, a subject of concern to a number of Federal agencies conducting or supporting research with human subjects. In light of testimony and data received thus far, the Commission has tentatively concluded that a small experiment should be conducted in which a few research institutions would be provided funds to establish nonfault compensation programs with varying features for several years.

Based on the results of this study, policymakers could decide whether the ethical obligations to injured subjects are best met through requiring a formal program of compensation in connection with federally funded research. We expect this report to be completed within the month.

OTHER STUDIES

In the interests of time, I will refer you to our annual report for further elaboration on our projects in progress. And, of course, I would be pleased to answer any questions you may have about them. They include studies of the ethical and legal implications of genetic engineering in human beings, differences in the availability of health services, informed consent to health care, genetic counseling and screening, confidentiality of, and patient access to, health records, and decisions to forego life-sustaining treatment.

Some of these are as current as the latest scientific journal; others present issues of long-standing concern. All are matters deserving the most serious attention as we look ahead to the increasing importance and abilities of the health sciences in the coming years.

FISCAL STATUS

As Chairman Abram told this subcommittee last year, the Commission intended to complete all of its 4-year statutory mandate in 3 years. We hope to reach this goal. Our ability to do so has, however, been impaired by the December 1981 continuing resolution.

President Carter initially submitted a recommendation of $2.5 million for the Commission for fiscal year 1982, to include the first 3 months of fiscal year 1983. President Reagan reduced this to $2.2 million, a move that we readily accepted since, as Mr. Abram testified last March, the Commission, like all areas of Government, must share in the budgetary belt-tightening.

Then in September, as part of the further 12-percent across-the-board reduction, the budget recommended for the Commission was set at $1,936,000.

You and your colleagues, recognizing that the final 15 months of the Commission's life covered by this budget will be our busiest period, approved an appropriation of $2 million. Unfortunately, the House committee, apparently not recognizing the 25-percent longer period covered by our fiscal year 1982 budget request, continued the Commission at its fiscal year 1981 level of $1.5 million.

Since an appropriations bill has yet to be adopted for the health area, we are included in the continuing resolution adopted in December, under which funding was reduced 4 percent below the lower of the House or Senate figures.

The resulting budget of $1,440,000 for 15 months has placed severe strains on the Commission. Reductions have been made in all categories, including personnel and travel, but as you will realize, certain items, such as rent, office expenses and meeting costs are quite inflexible so that the brunt has been borne by the funds available for our substantive studies, which are reduced by 90 percent from the level recommended last March by President Reagan.

Looking ahead to the remainder of fiscal year 1982 and to fiscal year 1983, under present funding, it does not appear that the Commission could fully accomplish its objectives. For example, in the area of our biennial report, we have had severely to curtail our studies of the operations of IRB's and to cancel meetings we had planned in that area. And just last week we learned that the cooperation we had expected from the National Center for Health Services Research in gathering and analyzing data will not be forthcoming because of limitations in that agency's own budget.

The Office of Management and Budget has been supportive of the Commission throughout our existence. It recognizes the problems caused by the fact that our fiscal year 1982 funding level under the continuing resolution does not take account of the unusual 15-month period covered in the case of the President's Commission by the continuing resolution. We have been advised that a request for additional funding will be considered as part of the process of general reexamination of all agencies' needs.

OMB has assured us that they are assessing our situation so that they can recommend funding adequate to assure that the Commission is able to fulfill its mandate. With additional economies, the Commission believes it should be able to complete its work with a total 15-month budget several hundred thousand dollars below that recommended in September 1981 by the President and approved in the Senate appropriations report.

If you have any questions, I would be glad to attempt to answer them.

Senator RUDMAN. Thank you very much.

I believe that is probably pretty much the feeling of the entire subcommittee, that we ought to get the work done that is mandated. Since you're fairly close to it, I suspect we will try to work closely—the staff may be in touch with you—to assure that we are able to complete the work of this Commission, which we will set out to do rather than ending up having three-quarters of a loaf, which in this case would be no loaf at all.

We thank you very much for your testimony.

Mr. CAPRON. Thank you.

NATIONAL COMMISSION ON STUDENT FINANCIAL ASSISTANCE

STATEMENT OF DAVID R. JONES, CHAIRMAN

ACCOMPANIED BY RICHARD T. JERUE

SUBCOMMITTEE PROCEDURE

Senator RUDMAN. Our last witness this afternoon is David R. Jones, Chairman of the National Commission on Student Financial Assistance.

PREPARED STATEMENT

Mr. Jones, if you would introduce your colleague, and also if you would provide us with a capsule summary of the workings of the Commission, we would appreciate that.

[The statement follows:]

STATEMENT OF DAVID R. JONES

Mr. Chairman and members of this subcommittee, it is my pleasure to appear before you today as Chairman of the National Commission on Student Financial Assistance. This is my second official function as chairman of this Commission. Yesterday, I chaired my first Commission meeting at which time the statement that I am to deliver today was unanimously endorsed and adopted by the Commission. Today, I appear before this distinguished body to request funds for the Commission for fiscal year 1983.

Mr. Chairman, I cannot take credit for the origination of this Commission. That credit belongs to the Congress. Several of your colleagues today, particularly, Senators Pell and Stafford, and several of your former colleagues, particularly, Senators Schweiker and Javits, were the Senate inspirations for the establishment of this Commission. They believed that this Commission was needed for one basic reason; to provide Congress with sufficient information on which to base the decisions it will be making in the important area of student aid.

Since 1958, Federal student assistance has developed to the point where, in fiscal 1981, funding had become a $6 billion Federal investment. It is anyone's guess what that figure will be in fiscal 1982 or 1983. Congress established the Commission to analyze this investment, and to report to Congress its findings in 1982 and 1983.

The Commission's mandate is a clear one. We must answer, in a timely manner, a series of questions that Congress has asked us to answer. In answering these questions the Commission hopefully will shed light on what Congress has determined to be a very complex topic.

Student financial assistance is extremely important to this Nation. In many cases it provides the only means by which our citizens can further their educational goals. However, as my predecessor as Commission chairman, Congressman William D. Ford, said last year, "We clearly do not have a well-articulated policy with respect to how the burden of paying for college should be shared by students, their parents, States, the Federal Government, and postsecondary educational institutions." The congressional mandate to this Commission is to provide you and your colleagues with the necessary data upon which a well-articulated policy on this matter can be developed.

Mr. Chairman, the National Commission on Student Financial Assistance is currently pursuing that goal. In fiscal year 1981 Congress appropriated $250,000 for the remaining 3 months of that fiscal year and in the current fiscal year we are operating under a continuing resolution appropriation of $960,000. These funds will enable the Commission to carry out its congressional mandate through September 30, 1982.

The Commission is divided into four subcommittees, each chaired by a Member of Congress. The subcommittees are addressing specific subject areas which Congress had asked the Commission to complete this year. These studies are: One, a study of the special allowance provision of the guaranteed student loan program; two, a study of the insurance premium of the guaranteed student loan program; three, a study of the in-school interest subsidy provision of the guaranteed student loan program; and four, a study of the definition of satisfactory academic progress for student aid eligibility.

These studies will be completed before Labor Day of this year. The special allowance study should be completed, with recommendations to the Congress, by mid-April. The in-school interest subsidy study should be completed, with recommendations to the Congress, by June. It is our hope that these studies will provide you with the information you need to make critical decisions in this very complex area.

In fiscal year 1983, the Commission will complete its activities. It will undertake several major studies including a review of financial assistance for graduate students and longitudinal studies to determine whether existing student aid programs have made any difference in students' decisions to attend college and their decisions to attend particular colleges. In fiscal year 1983, we will make our final report to the Congress, providing the conclusions of all of our studies. I have attached a list of those studies which the Commission will be authorizing in the near future.

To complete Congress' mandate in fiscal year 1983, we will need the same level of funding that Congress is providing during this current fiscal year. Last fall the Commission did send to the Office of Management and Budget a budget recommendation for fiscal year 1983 in the amount of $2 million. This figure may have appeared reasonable, considering the congressional mandate, and when compared to Congress' initial thinking that the appropriations for the Commission should "not exceed a total of $10 million * * *." In fact, $2 million was the amount included for Commission activities for fiscal year 1983 under the Omnibus Budget Reconciliation Act.

The Commission and the members of the Commission staff have attempted to eliminate any unnecessary duplication with the Department of Education in funding studies in the area of financial assistance for postsecondary education. It is our belief that the Commission will find support for its work from the independent sector, such as the Council for the Advancement and Support of Education. It is for this reason that we are requesting $960,000 for fiscal year 1983, instead of the $2 million which was originally requested from the Office of Management and Budget.

Mr. Chairman, this past session of Congress saw vast changes in Federal student aid programs. We do not yet know the effect of these changes, yet this session is being asked to consider further changes. I view the National Commission as an opportunity to look at these programs critically, but objectively, and as a chance to provide you with sound, specific, and justifiable information concerning student aid and its impact on higher education, students, and their families. I would be pleased to answer any questions you might have at this time.

Attachment I

Additional Commission Mandated Studies

These studies, requested by Congress, must be completed in fiscal year 1983.

I. Studies concerning the delivery and servicing of student loans:

a. a study of ways to reduce default, fraud, abuse and delinquency;

b. a study of mechanisms for effective/efficient origination, servicing, and collection of student loans;

c. a study of the appropriate mechanism to provide flexible repayment options;

d. a study of means to remove barriers caused by lenders' discrimination.

II. Studies addressing the impact of student aid issues on consumers:

a. a study of the appropriate balance between loans and other forms of financing;

b. a study of the impact of borrowing on parents;

c. a study of the appropriate annual and aggregate self-help limits;

d. a study of the impact of availability of federal student financial assistance on the availability of assistance from other sources;

e. a study of the longitudinal studies of high school student in order to determine effects of federal assistance programs upon postsecondary access.

III. Studies pertaining to student loan capital:

a. a study of the adequacy of capital to serve postsecondary educational needs;

b. a study of the appropriate sources of student loan capital;

c. a study of the appropriate level of public subsidy to students and parents for the cost of capital;

d. a study of the cost to the Federal Government of the arbitrage derived from revenue bonds.

IV. Other studies:

a. a study of the impact of various levels of student borrowing and student aid on educational performance, career choices, and educational choices;

b. a study of the impact of the availability of student assistance on the cost of postsecondary education;

c. a study of the effectiveness of the existing formulas for allotment among the states (this study may be moot if indeed the campus-based programs and their allotment formulas are eliminated by this Congress);

d. a study of higher education institutional eligibility (the out-of-the-country school problem);

e. a study of graduate education throughout the United States.

FY 83
Salaries and Expenses

11.1	Permanent Positions	307
11.3	Other than Full-Time Permanent	-0-
11.8	Special Personnel Services Payments	18
11.9	Total Personnel Compensation	325
12.9	Personnel Benefits	29
21.0	Travel and Transportation of Persons	100
22.0	Transportation of Things	2
23.0	Communication, Utilities, and Other Rent	64
24.0	Printing and Reproduction	30
25.0	Other Services	400
26.0	Supplies and Materials	8
31.0	Equipment	2
99.0	Total Obligations	960

COMMISSIONERS

Appointed by the President

Mr. David R. Jones, Chairman
Executive Director of Development
Vanderbilt University
427 Kirkland Hall
Nashville, TN 37215

Mr. Richard E. Kavanagh
Senior Vice President
Shearson/American Express Inc.
Three 1st National Plaza, Suite 4850
Chicago, IL 60602

Ms. Marilyn D. Liddicoat
Attorney at Law
400 Skylark Lane
Watsonville, CA 95076

Mr. Kenneth R. Reeher
Executive Director
Pennsylvania Higher Education
Assistance Agency
3rd Floor Townhouse
Boas Street
Harrisburg, PA 17102

Appointed by the President Pro Tem of the Senate

The Hon. Claiborne Pell (D.-R.I.)
U.S. Senate
325 Russell Senate Office Building
Washington, DC 20510

The Hon. Robert T. Stafford (R.-Vt.)
U.S. Senate
5219 Dirksen Senate Office Building
Washington, DC 20510

Mr. David P. Gardner
President
University of Utah
Salt Lake City, UT 84112

Mr. David M. Irwin
Executive Vice President
Washington Friends of Higher Education
365 Westland Building
100 South King Street
Seattle, WA 98104

Appointed by the Speaker of the House

The Hon. Wendell D. Bailey (R.-Mo.)
U.S. House of Representatives
504 Cannon House Office Building
Washington, DC 20515

The Hon. William D. Ford (D.-Mich.)
U.S. House of Representatives
239 Cannon House Office Building
Washington, DC 20515

Dr. John Brademas
President
New York University
70 Washington Square South
New York, NY 10012

Mr. Kenneth G. Ryder
President
Northeastern University
360 Huntington Avenue
Boston, MA 02155

INTRODUCTION OF ASSOCIATE

Mr. JONES. Thank you, Mr. Chairman.

I have with me today Mr. Richard T. Jerue, the executive director of the Commission. Mr. Jerue has served as counsel to the minority, to the Senate Subcommittee on Education, Arts and Humanities from January through June 1981. Prior to that time he was the subcommittee's associate counsel.

Mr. Chairman and members of this subcommittee, it is my pleasure to appear before you today as Chairman of the National Commission on Student Financial Assistance. This is my second official function as Chairman of the Commission. Yesterday I chaired my first Commission meeting, at which time the statement that I am to deliver to you today was unanimously endorsed and adopted by the Commission. Today I appear before this distinguished body to request funds for the Commission for fiscal year 1983.

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Congress established the Commission to analyze this investment and to report to Congress its findings in 1982 and 1983.

The Commission's mandate is a clear one. We must answer, in a timely manner, a series of questions that Congress has asked us to respond to. In answering these questions the Commission hopefully will shed light on what Congress has determined to be a very complex topic.

Student financial assistance is extremely important to this Nation. In many cases it provides the only means by which our citizens can further their educational goals. However, as my predecessor as chairman of this Commission, Congressman Ford of Michigan said last year—and I quote:

> We clearly do not have a well-articulated policy with respect to how the burden of paying for college should be shared by students, their parents, States, the Federal Government, and postsecondary educational institutions.

The congressional mandate to this Commission is to provide you and your colleagues with the necessary data upon which a well-articulated policy on this matter can be developed.

The National Commission on Student Financial Assistance is currently pursuing that goal. In fiscal year 1981 Congress appropriated $250,000 for the remaining 3 months of fiscal year 1981 to begin the work of the Commission. And in the current fiscal year we are operating under a continuing resolution appropriation of $960,000. These funds will enable the Commission to carry out its congressional mandate through September 30, 1982.

The Commission, as of yesterday's actions, is divided into four subcommittees, each chaired by a Member of Congress. The subcommittees are addressing specific subject areas which Congress had asked the Commission to complete this year. These studies are: First, a study of the special allowance provision of the guaranteed student loan program; second, a study of the insurance premium of the guaranteed student loan program; third, a study of the in-school interest subsidy provision of the guaranteed student loan program; and fourth, a study of the definition of satisfactory academic progress for student aid eligibility.

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To complete the congressional mandate in fiscal year 1983, we will need the same level of funding that Congress is providing during this fiscal year. Last fall the Commission did send to the Office of Management and Budget a recommendation for fiscal year 1983 in the amount of $2 million. This figure may have appeared reasonable, considering the congressional mandate, and when compared to Congress initial thinking that the appropriations for the Commission should not exceed a total of $10 million.

In fact, $2 million was the amount included for Commission activities for fiscal year 1983 under the Omnibus Budget Reconciliation Act.

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Mr. Chairman, this past session of Congress saw vast changes in Federal student aid programs. We do not yet know the effect of these changes, yet this session is being asked to consider further changes. I view the National Commission as an opportunity to look at these programs critically, but objectively, and as a chance to provide you with sound, specific, and justifiable information concerning student aid and its impact on higher education, students, and their families.

I would be pleased to answer any of your questions. Thank you.

Senator RUDMAN. Thank you very much.

I know that you are new to this position. It seems to me that we have a problem right up here at the beginning I want to tell you about. I don't know if you are aware of this or not.

You keep using the figure $960,000, which, of course, would be the $1 million that the House had voted, minus 4 percent. Looking at the statutory language under the continuing resolution—the Senate provided zero, of course—the Commission then receives funding at a rate equal to the lower of the fiscal year 1981 level or the House-passed level.

In fiscal year 1981 the Commission received $250,000.

Mr. JONES. That's correct.

Senator RUDMAN. In fiscal year 1982 the House recommended $1 million.

Mr. JONES. That's correct.

Senator RUDMAN. Under the continuing resolution you're entitled to the lower of those two, less 4 percent. And thus I think we're going to have to get into this with you because according to our staff—and only after preliminary discussion with GAO—they agree with the interpretation that your budget for the year is $240,000, not $960,000.

You know, if that's true—and it appears like it probably is—then I would say that you've got some scrambling to do one way or the other.

Would you like to respond to that? If you feel you're unprepared to, I can fully understand that. We wanted to simply bring that to your attention.

Mr. JONES. Mr. Chairman, I appreciate your bringing that to my attention. You're the first person since I've been here since Monday, meeting with members of the Commission, two Congressmen, and others, who has brought that to my attention. And I have no reason to doubt that definition.

Now let me ask Mr. Jerue whether or not he had received different information.

Mr. JERUE. Yes, I'd be glad to respond.

We had been under the same interpretation that you were, when the continuing resolution was passing, that we would be at the lower level of $250,000 or $1 million minus 4 percent. We were informed by OMB that they interpreted the continuing resolution language to say that it would be your continuing level of operation for fiscal 1981 or the 1982 figure, whichever was less.

They interpreted our 1981 level of operation to be $250,000 annualized, since we had only received our initial appropriation in the June supplemental in 1981 for the last 3 months of fiscal year 1981. Thus, our 1981 funding level was for 3 months, not an entire year. And that basically is the reason we're operating under that kind of assumption.

Senator RUDMAN. Of course, this has to be figured on an annual basis. I'm not sure there's a great deal of room for interpretation.

You know, as a lawyer, I'm always interested to hear about OMB's interpretation. And I'm getting to the point here in Washington, if somebody says 2 and 2 is 4, someone is going to give me an interpretation. You can put out four blocks and knock them off one at a time, and it adds up to four.

The resolution is pretty clear. You know, I'm not being critical of, certainly, the new chairman, or of you. All I am simply saying is that I want to find somebody at OMB who can interpret this particular statement, although lately I think they can add 2 and 2 and get 5. But I would really like to know how they can possibly interpret this to mean anything other than what it means.

What it says is that it shall be the lower of the fiscal year 1981 level, the House-passed level, and so forth. And it comes out here to $250,000.

Mr. JERUE. They interpreted that to say the 1981 level of operations.

Senator RUDMAN. I see.

Mr. JERUE. And I questioned their interpretation at that time because it was in the midst of our preparation for the 1983 budget, and they said this continuing resolution is interpreted that way. And in that kind of situation I don't know how to respond.

Senator RUDMAN. Well, let me just suggest that you get together with our staff, because if GAO thinks it's $240,000 and you think it's $960,000, and we turn out to be right and you turn out to be wrong in thinking $960,000, then you've got a problem. So I think we ought to check into that.

Mr. JONES. Mr. Chairman, we will do just that.

Fortunately, I might point out to you and your staff, that after President Reagan appointed me and prior to having the opportunity to meet with the other Commissioners when Congress came back in session, I had requested the Commission staff not to authorize any further studies or grants, nor add any members to the staff, until I had a chance to look at the budget. So assuming that your interpretation is correct, I don't think we will have extended ourselves beyond the opportunity of getting back together to see if we can't come up with a satisfactory approach.

Senator RUDMAN. I think that's very appropriate.

And, again, it's really not my interpretation; it's what I think the law says.

Mr. JONES. Yes, sir.

Senator RUDMAN. But if there is some problem here we ought to get to it.

Just one question, really. With all the agencies we have, with policy determination agencies—we've got CBO and CRS and GAO and so many—what is the unique contribution that you feel that you can contribute here with this Commission in this particular area, which is a problem area, particularly after the President's latest proposal?

Mr. JONES. Senator, having been here in this building for 3 years, from 1971 through 1973, with one of the great members of this body, James Buckley, when I was asked by the White House to accept this position—a position, by the way, I did not seek—I only accepted it after being assured by the White House that it was important that they appoint a chairman, and that it was essential if this were going to be a bipartisan commission, as you can see it is by the makeup of the body, that it have somebody who has worked with the Senate and with the House.

One of the first things I did was to come to Washington to meet with Dr. Elmendorf with the Department of Education, and I raised the same question with him. I said "I've read what Congress has mandated to this Commission; it seems to me that certainly the Department must be involved in a number of these studies." And, I said, "I would appreciate it very much if you would ask members of the staff over there in this important area of student financial assistance to provide me with a list of those studies," which Dr. Elmendorf did immediately.

I found a tremendous overlap in some of the work being done currently by the Department and in what Congress had requested this Commission to do. And then I began inquiring among people within the higher education community, because, as your staff may have mentioned to you, I'm currently on the staff of Vanderbilt University. And I learned, here again, that even in the private sector, the independent sector, a number of those studies are already underway and have been for the last couple of years.

It was my own advice to the members of the Commission on Wednesday morning of this week that I had no problem coming before this subcommittee, having already cut the staff's budget by $1 million. I will have no problem if, depending upon the interpretation of our funding level for fiscal year 1982, that if I discover in the work that I have just agreed to undertake—which, for all intents and purposes concerning the per diem, is darn well voluntary, as far as I look at it—that if I discover in the next 30, 60, or 90 days that we can do this for a lot less, we will.

I did notice, by the way, that in reviewing the expenditures of the Commission under the former chairman, during those 3 months from July 1, 1981 through September 30, 1981—fiscal year 1981 when Congress had provided approximately $250,000 to begin our activities—the expenditure level at that time was only about $180,000.

So I have to weigh a number of values here:

One, I've been asked by the White House to chair a Commission in an area I feel very strongly about;

Second, I have personally had the opportunity to meet privately with 9 of the 12 Commissioners at this point. I can assure you that each of them feels that they are going to undertake their civic duty and are working very hard in this area;

And, third—and this—probably I'm giving too long of a preface—gets to the heart of it: In each case, the four Members of Congress, and our other Commissioners say perhaps we will now have a Commission independent of the pressures, of normal pressures, the special interests in higher education here in Washington—which is understandable—and the pressures from the budget-crunchers at OMB—and I use that word literally because I think that's what you have over there, unfortunately—and some of the tremendous pressures that you and I know impact on the members of the Senate and House Committees. Too often they are faced with today's crisis and can't get to tomorrow's solutions. And I think both of us would have to agree that that is the case.

Maybe Dr. Gardner—I'm going to have to paraphrase him—the president of the University of Utah, said it best to the Commission Wednesday morning: An independent commission, bipartisan, no axe to grind, interested in the students, what's best for this country; we have a year and a half; let's get the job done; let's not take on tomorrow's battle—not the front page of the New York Times or the Washington Post, not that battle, but the long-range battle for what's best.

I think that's the kind of commitment you'll have from those Commissioners in an area that, quite frankly, is serious.

SUBMITTED QUESTIONS

Senator RUDMAN. Thank you very much. We appreciate your testimony today and wish you good luck. We will certainly get together with the staff to find out just where we are on that particular item.

I also want to instruct the stenographer that at the beginning of the session, the hearing devoted to the National Commission on Libraries and Information Science, there is a statement of Senator Weicker which should be inserted into the record in full support of the restoration of their funds at that point in the record.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

Question. The Reagan administration is proposing major changes in both the funding level and structure of all of the student financial assistance programs run by the Federal Government: To what extent does your Commission have the autonomy to disagree with and criticize Reagan administration budget and legislative proposals; and if you do have this autonomy, can you briefly summarize for the committee what you think about the administration's fiscal year 1983 budget proposals for student aid?

Answer. The Commission has a very precise mandate. We must answer 22 specific student aid questions which Congress has asked us to answer, and we must do this in 2 years. That task alone will take up all of our time. Although we probably have the autonomy to disagree, we would not have sufficient time to do that and complete the work Congress has set out for us to do. Our primary goal is to serve you in an objective, nonpartisan manner. To perform that task, and to have credibility in the reports we make to you, will require us to stay out of the fray of the day-to-day budget battles, and instead, to complete the studies which you have mandated us to conduct. That task alone will take up all of our time.

Question. The Commission is charged, in the education amendments of 1980, with studying and reporting to Congress and the executive branch on almost every aspect of Federal student aid programs: What focus are you bringing to your very extensive charge to study all aspects of Federal student aid policies; and specifically, what study or studies is the Commission preparing? On what subjects? When can Congress expect to receive them?

Answer. We intend to undertake the 22 specific studies which Congress has asked us to undertake. In fiscal year 1982, we are undertaking those studies which must be completed within the first year of the Commission's operations. Those four studies are: One, a study of the special allowance provision of the guaranteed student loan program; two, a study of the insurance premium of the guaranteed student loan program; three, a study of the in-school interest subsidy provision of the guaranteed student loan program; and four, a study of the definition of satisfactory academic progress for student aid eligibility.

The special allowance study should be completed, with recommendations to the Congress, by mid-April of this year. The in-school interest subsidy study should be completed, with recommendations to the Congress, by June of this year. The other two studies will be completed between now and Labor Day of this year.

In fiscal year 1983, the Commission will complete whatever studies it has not completed by that time. It will undertake a review of financial assistance for graduate students and longitudinal studies to determine whether existing student aid programs have made any difference in students' decisions to attend college and their decisions to attend a particular college. In fiscal 1983, the Commission will make its final report to Congress, providing the conclusions of all of the studies it has undertaken, and it will then terminate its operation.

In addition, the Commission has prepared a background paper on the guaranteed student loan program which will be submitted to Congress in late February 1982.

Question. Salaries, expenses, and travel.—There is great concern that in many small commissions, far from the sight and mind of Congress, there is too much spent on salaries, excess staffing, travel, and consultants: Please provide the committee with a detailed breakdown of how much you spent in fiscal 1981, and plan to spend in fiscal 1982 and 1983 for each of those activities.

Answer. I have enclosed a budget justification for fiscal year 1983, which includes the information you seek for fiscal years 1982 and 1983. We currently have eight people on staff at the Commission, and we would like to have three additional staff members. This staff is responsible for conducting and overseeing all of the Commission's 22 mandated studies over the next year and a half, and in then terminating the Commission's operations by the end of 1983. In fiscal year 1981 the Commission incurred expenditures in the following categories:

Personnel compensation	$17,000
Personnel benefits	1,000
Travel	1,000
Printing and reproduction	3,000
Other services	154,000
Supplies	1,000
Equipment	5,000
Total	182,000

The major expenditure of the Commission was a contract with the Wharton School of the University of Pennsylvania for $120,693 to conduct an in-depth analysis of the special allowance provision of the guaranteed student loan program.

SUBCOMMITTEE RECESS

Senator RUDMAN. The subcommittee will now stand in recess until 10 a.m. tomorrow, to continue budget hearings on a number of other agencies.

[Whereupon, at 4:15 p.m., Thursday, February, 11, the subcommittee was recessed, to reconvene at 10 a.m., Friday, February 12.]

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1983

FRIDAY, FEBRUARY 12, 1982

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, D.C.

The subcommittee met at 11 a.m. in room 1114, Everett McKinley Dirksen Senate Office Building, Hon. Daniel K. Inouye presiding.

Present: Senator Inouye.

FEDERAL MEDIATION AND CONCILIATION SERVICE

STATEMENT OF KENNETH E. MOFFETT, DIRECTOR

ACCOMPANIED BY:
- NANCY B. BROFF, GENERAL COUNSEL
- JOHN C. ZANCANARO, DIRECTOR OF POLICY AND RESOURCE MANAGEMENT
- RICHARD J. LAULOR, ASSISTANT DIRECTOR FOR BUDGET AND FINANCE

SUBCOMMITTEE PROCEDURE

Senator INOUYE. The subcommittee will please come to order.

This morning, we'll hear from five of the so-called related agencies. The first witness is Mr. Kenneth Moffett, Director of the Federal Mediation and Conciliation Service.

Mr. Moffett, before proceeding, do you wish to present your associates?

PREPARED STATEMENT

Mr. MOFFETT. Senator, we have entered our statement into the record.

Senator INOUYE. Without objection, your full statement will be made a part of the record.

[The statement follows:]

STATEMENT OF KENNETH E. MOFFETT

I am pleased to present the President's Fiscal Year 1983 appropriation request for the Federal Mediation and Conciliation Service.

This appropriations request has been designed to achieve significant economies while maintaining the highest standard of mediation services. FMCS has recently taken many steps to reduce its appropriation and staffing levels. In FY 1982 a major reorganization of administrative duties was undertaken. This reorganization is described in detail later in my statement. Let me assure you that every effort will be made to maintain our primary mission of facilitating and promoting the settlement of labor disputes and avoiding or minimizing work stoppages.

Consistent with the Administration's general policy of charging user fees whenever appropriate, a significant change reflected in this year's submission is the institution of a "fee-for-service" system for arbitration services. This would be accomplished through a new general provision in this Appropriation Act. The new user fee is expected to save FMCS approximately one-half million dollars in FY 1983.

Major Industry Negotiations

In FY 1983, major contracts will be expiring in the retail, food, health care, steel, aluminum, lumber, maritime, construction, communications, transportation and aerospace industries. These negotiations will involve over two million workers.

Dispute activity in the nation is currently at lower than normal levels. However, with an improvement in overall economic conditions, it is anticipated that labor unions will attempt to recover past contract concessions. The net effect will be a continued need for FMCS assistance by the bargaining parties. The number of work stoppages may increase as labor and management wrestle over tough economic issues.

Public sector dispute mediation, involving employees at the Federal, state, and local levels is commanding an increasing share of our attention as unionization in these sectors grows. Strikes by public employees can have an immediate and devastating effect on essential services to the public. In jurisdictions without viable mediation agencies, FMCS will continue to provide, when requested, mediation assistance to state and local government disputes.

A National Representative will continue to coordinate Federal sector activities in accordance with the provisions of Public Law 95-454, the Civil Service Reform Act, which established collective bargaining for Federal employees and directed FMCS to provide mediation services to Federal agencies and labor organizations.

FMCS is also required to furnish mediation services to all private health care institutions under Public Law 93-360, which was passed in 1974. In FY 1983, mediators will continue to be assigned to health care disputes to ensure that critical health care services will not be interrupted.

Technical Assistance/Public Information and Educational Activities

Strikes resulting from poor labor-management relationships cost us millions of dollars each year. FMCS's technical assistance program, which is coordinated at the National Office level, provides the parties with a preventive mediation forum that is removed from the pressurized atmosphere of the bargaining table.

In FY 1983 mediators will continue to assist in the formulation and maintenance of area and industry-wide labor-management committees, foreman-steward training programs, and Relations-by-Objectives programs developed by the Service.

We will also continue in FY 1983 to promote increased public knowledge and understanding of FMCS and its role in mediating labor disputes.

Arbitration Services

The Service's primary arbitration function is to maintain a roster of highly qualified arbitrators and provide a panel of arbitrators to requesting parties. One of our highest priorities in arbitration is that our response to panel requests be timely, since the livelihood of workers awaiting a decision on a grievance may be at stake.

In the past, arbitration services have been provided without charge. However, in line with the Administration's general policy of charging fees for services which benefit specific groups, a general provision is requested which would allow and require the charging of a user fee for these services.

Management and Administrative Support

FMCS's management and administrative support functions have an impact on all program areas. These functions include budget and financial management, personnel management, automated data processing, planning and evaluation, training, program audit activities, and legal services.

Despite personnel reductions, women and members of minority groups now hold more senior management positions than before the reorganization. In FY 1983, the Service will continue affirmative action through training and placement of women and minorities wherever opportunities exist.

In the area of internal controls, emphasis will be placed on assuring that allocated funds are used as effectively, efficiently, and economically as possible. Reviews of new administrative procedures implemented in the recent reorganization will be undertaken to ensure that desired results are being achieved.

Agency Reorganization

To accomplish the FY 1982 budget reductions which FMCS experienced as part of the President's economic policy, we undertook a major reorganization of administrative and management operations in FY 1982. The agency's eight regions were consolidated into four, personnel were reduced by 21 percent, and agency case control functions were centralized in Washington. These actions are designed to produce a reduction in the cost of administering our mediation program with little or no adverse impact on the level of dispute resolution. The consolidation and centralization of our case control functions in the National Office has resulted in a more consistent application of our jurisdictional policy and will allow closer monitoring of cases to ensure that significant disputes are properly serviced.

Summary

To accomplish our mission, in FY 1983 the Service is requesting a total appropriation of $20,190,000, which is a reduction of $4.4 million. We are also requesting 362 full-time permanent positions, a reduction of 13 from FY 1982.

Mr. Chairman, I will be happy to answer any questions you may have at this time.

FORECAST OF FMCS ACTIVITY

Mr. MOFFETT. We are going to experience a very busy calendar year. As part of our recent reorganization, we have consolidated eight regions into four. We have maintained the same level of field mediator staff and the same number of field offices. We are hoping to service the public the same way we always have in the past.

This is the heaviest year of the 3-year bargaining cycle. As you know, the auto negotiations are going on between Ford and United Auto Workers right now. We are hoping that they will come to a peaceful conclusion. We realize that with the economy being in the situation that it is, there will be many concession-type agreements. This is going to be the big issue, as far as 1982 is concerned.

Senator INOUYE. In view of the administration's apparent philosophy of not intervening between labor-management disagreements in collective bargaining efforts, is there a declining need for your agency?

Mr. MOFFETT. I don't believe so. This administration has indicated that the White House and the Department of Labor will not intervene in labor disputes but will defer to FMCS. In some prior administrations, the White House and the Department of Labor have taken a more active role in labor negotiations.

Since 1947, following the passage of the Taft-Hartley Act, we have been involved in all negotiations, with the possible exception of the auto and steel negotiations.

The administration's policy of nonintervention will not limit the amount of involvement that we will have. I do believe that there may be fewer strikes. I think the strikes that do take place will be of longer duration because of the difficult issues the parties will be facing. But I do not believe that there will be a reduced need for our services. Rather, with the kind of issues that the parties are going to be facing, I think there is going to be a greater need.

STRIKE SITUATION

Senator INOUYE. Did you say you anticipate fewer strikes during the decade of the 1980's?

Mr. MOFFETT. Yes, sir.

Senator INOUYE. What do you base that on?

Mr. MOFFETT. I base it on the fact that when you have unemployment rates at current levels, inflation, and all the attendant difficulties of a recession, there is a likelihood that fewer people are going to be interested in strikes. They are going to be more interested in job security, in maintaining the status quo. There will be a whole host of concessions made all across the board, all across the United States. We don't see this abating, at least not in this year.

REDUCTION IN STAFF

Senator INOUYE. We have been advised that you have laid off 85 field clerical staff members in order to avoid laying off any mediators. Will this reduction in clerical support affect the ability of your mediators to carry out their responsibilities?

Mr. MOFFETT. No, not in the least. Our mediators will continue to prepare handwritten reports. The reports will be used in handwritten form, rather than being typed. This is unfortunate, but we had a choice. We could have either reduced our mediator staff by the numbers that you just mentioned or our clerical support. The effect of reducing mediators would have meant that approximately 4,000 labor disputes would have gone unattended this year. So it was an easy choice. We do not feel that using reports in handwritten form will affect our mediating abilities.

Senator INOUYE. How will the cuts in fiscal year 1983 affect your ability to carry out your duties?

Mr. MOFFETT. At the levels in our fiscal year 1983 request, we will be able to carry out our duties. Any further cuts will directly affect our program areas. When I talk about program areas, I am referring to mediators being laid off. We are hoping this will not occur, because there are still going to be labor disputes and we are still going to need mediators to attend to the labor disputes. Certainly we cannot afford to lose any more than we have already.

Senator INOUYE. In your opening remarks, you referred to the consolidation of your eight regional offices into four. How will that work out?

Mr. MOFFETT. The regions will no longer make jurisdictional determinations on the 30-day notice requirements under the Taft-Hartley law. We have centralized this decisionmaking function and several other functions. As a result, 13 people are going to be doing the work of 46. We have streamlined the agency by centralizing and anticipate implementing automated data processing to increase efficiency. With four regions, we will have a supervisor-to-employee ratio of 1 to 15, rather than 1 to 10.

USER FEES

Senator INOUYE. As you are aware, the President's budget suggests the collection of user fees for your services and for the National Mediation Board. How will this work out?

Mr. MOFFETT. The Service's three main program areas—mediation, arbitration, and technical assistance—will continue. User fees will be implemented in the arbitration area only. We have established a task force and we are developing procedures to implement the user fees in fiscal year 1983.

The parties will notify us that they would like a panel of arbitrators. For providing this service, there will be a fee, the amount of which is yet to be determined.

Senator INOUYE. If the Congress should concur with the President's suggestion, how much will it save on the user fees in fiscal 1983?

Mr. MOFFETT. Approximately $500,000.

Senator INOUYE. Pardon?

Mr. MOFFETT. $500,000.

LABOR-MANAGEMENT GRANTS

Senator INOUYE. The Senate report on the regular fiscal 1982 Labor-HHS-Education bill contains the following directive: "The Federal Mediation and Conciliation Service shall give priority to the application for the grant of funds for establishment of a joint labor/management committee for the construction industry in the New York metropolitan area."

What is the status of activities to carry out this directive?

Mr. MOFFETT. We intend to comply with that directive, sir. We are waiting for an application.

SUBMITTED QUESTIONS

Senator INOUYE. We have many other questions I would like to submit to you, Mr. Moffett, for your consideration and responses. I regret very much that we have to cut these hearings a little briefly. But as you can imagine, most of my colleagues have rushed off to the four corners of the Earth. And I'm about the only one left.

Mr. MOFFETT. It's a pleasure being here, sir.

Senator INOUYE. It's a pleasure having you. I would like to commend you for carrying on with less help. It's not going to be easy, but I'm certain you can do it.

Thank you.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

BETTER USE OF RESOURCES

The latest case figures show more than 1,800 cases involving "Technical Assistance" or "Information and Education."

. What precisely is meant by these terms?

Technical assistance activities are undertaken to improve labor management relationships in order to create an atmosphere of mutual cooperation between the parties prior to actual contract negotiations. Depending on the nature of the problems, TA activities may include the formulation of a labor-management committee to deal with problems that arise during the administration of a labor agreement, joint or separate training for foremen and stewards to deal with day-to-day difficulties, or in severely strained relationships the conduct of a Relations By Objective program (RBO). The RBO program is a highly selective and intense program conducted by the Service to improve labor relations in situations where relationships are severely damaged. The success rate of these programs is impressive and the program has met with high acclaim from participants.

Public information and educational activities are usually conducted after hours and involve mediators educating labor relations people in collective bargaining and the role that FMCS plays in labor relations. Forums for this type of activity include labor relations seminars and conferences, university lectures and interviews through the media.

. Could resources be better spent concentrating on Dispute cases instead of these cases?

Dispute cases take the highest priority but the Service feels that successful TA programs can reduce the need for active FMCS involvement at contract time. Effective TA activities often mean that a bargaining situation which produced a strike in a prior negotiation can now be settled peacefully without a strike. This is in accord with our mission of preventing or minimizing work stoppages.

In Fiscal Year 1983 the Service will concentrate its TA efforts on highly critical relationships and be even more selective in undertaking TA programs. Technical assistance caseload will probably decline to approximately 400 cases.

. How much is budgeted for these cases in Fiscal 1982?

The Service expends less than five per cent of its resources on TA and PI activity.

USE OF COMPUTER TECHNOLOGY

. What can be done to better utilize automatic data processing to improve your operations?

As part of its plan for improving efficiency and effectiveness and developing further economies in operations, the Service has entered into a contractual agreement with the Federal Computer Performance Evaluation and Simulation Center (FEDSIM) to study the feasibility of increasing automatic data processing (ADP) utilization by the Service. FEDSIM will examine all potential automated areas to determine where ADP will be most cost-effective.

- What is the potential for budgetary savings through greater use of automatic data processing?

  It is impossible at this stage in the FEDSIM study to determine the potential savings to be derived from data processing, but early indications are that the Service will realize a substantial savings as well as improvement in our operations.

DUPLICATION OF MONITORING ACTIVITIES

The Labor Department maintains a staff within the Labor Management Services Administration to monitor collective bargaining situations, in order to keep Executive Branch officials aware of developments.

- Do you think there is duplication and overlap between your activities in this area and those of the Labor Department?

  The Service has an obvious need to closely monitor major contract negotiations. Field mediators are assigned cases and expected to track significant developments so that when there is a need for mediation, little or no time is wasted in becoming familiar with the situation. In addition, national office officials are briefed on important developments in bargaining in case their involvement becomes necessary.

  As far as we know, the work done by staff members of the Labor-Management Services Administration is not duplicative, and we have an informal agreement to exchange information with staff members of the Department of Labor.

GAO REPORT ON MEDIATION SERVICES

- In an October 1980 report, GAO challenged the Federal Mediation and Conciliation Service's involvement in state and local public employee disputes and also said that FMCS was not adequately assessing the impact of private sector labor disputes on commerce before providing mediation services. What actions has the Service taken regarding GAO's recommendation that it should be more selective in providing mediation services?

  (NOTE: In an October 1980 report, GAO reported that the FMCS should be more selective in providing dispute mediation services. GAO challenged the Service's involvement in the National Labor Relations Act specifically excluded, by definition, these disputes from coverage. GAO also questioned the Service's involvement in some private sector labor disputes. GAO reported the impact the private sector labor dispute would have on commerce before providing mediation services.)

  As a result of the reorganization the Service has consolidated the function of making jurisdictional determinations into one office located at our national headquarters. This will assure consistency in exercise of jurisdiction and in case assignment policies.

  The Service continues to be involved in public sector disputes in states which do not have viable mediation agencies and in exceptional circumstances in states which do have mediation agencies. A 1981 report by the Congressional Research Service affirmed the position of FMCS and stated that FMCS has clear legislative authority for involvement in public sector disputes.

STATUS OF REORGANIZATION

In January you announced a reorganization of your agency, consolidating 8 regional offices into 4.

(NOTE: The reorganization centralizes audit and case control in Washington, D. C.; this should help overcome GAO criticism of the Service for inconsistent selection of cases for mediation.)

. What will be the impact of this reorganization?

The reorganization will have no impact on the Service's ability to perform its mission. Dispute mediation activities will not be disrupted by the reorganization. The administrative and management operations will be most significantly affected.

. Which offices will close, and which will stay open?

One field office, in Worcester, Massachusetts was consolidated into the Boston field office. No other field offices have been closed as a result of the reorganization. The former Regional Offices in Philadelphia, Cleveland, St. Louis and Seattle have become District Offices. The remaining Regional Offices are located in New York, Atlanta, Chicago and San Francisco.

. What benefits will result from this reorganization?

The reorganization will reduce operating costs by eliminating most field support staff. The case control function, and voucher examination and other administrative functions have been centralized to achieve significant economies. The management structure is tighter and more efficient.

. How much will this reorganization save, on an annual basis?

The reorganization will save approximately $2,000,000 in salaries and benefits plus approximately $1,667,000 in office space rental annually.

UTILIZATION OF STAFF RESOURCES

. How does the Service plan to establish priorities and make resource allocation decisions to insure that it can provide adequate mediation services, given the current consolidation of its field offices?

(NOTE: In an October 1980 report, GAO reported that the Federal Mediation and Conciliation Service did not have adequate information on the utilization of its staff resources. Therefore, the Service could not determine the level of resources used in Dispute Mediation, Technical Assistance, or Public Information assignments on a field office, regional or national level. Accordingly, GAO said that there is little assurance that the allocation of resources among field offices is appropriately matched to the workload.)

Mediation efforts in the field will continue as prior to the reorganization. The allocation of mediator positions is determined through an annual workload/staffing review of each field location. Data from several past years are considered to determine trends prior to final decisions on allocations. In addition, geographical boundaries are studied to determine if shifts in workload mandate changing duty station boundaries rather than transferring of personnel.

LABOR-MANAGEMENT COOPERATION PROJECT

- What has been the experience to date with these joint labor-management cooperation projects?

  The fourteen projects awarded in FY 1981 became operational under FMCS funding on November 1, 1981. With only three months of history to them, it is premature to assess their success. We can say, however, that virtually all of the projects are on or ahead of their schedules and that preliminary local response to the committees is very favorable.

- How many applications for funding have been received, and how many grants made?

  In FY 1981, a total of 63 grant applications were received despite the extremely late publication of the application solicitation notice in the Federal Register. The 63 applications requested over $4.8 million in funds. A total of 14 grants were awarded for a total of $999,856.

  In FY 1982, FMCS received over one thousand requests for grant program guidelines and application kits. With the reduced allocation of $500,000 and competition restricted to area committees only, we expect no more than 35 applications and only 6 to 9 grant awards. The deadline for receipt of area committee applications is April 30, 1982.

NATIONAL LABOR RELATIONS BOARD

STATEMENTS OF:
JOHN R. VAN DE WATER, CHAIRMAN
WILLIAM A. LUBBERS, GENERAL COUNSEL

ACCOMPANIED BY:
JOHN E. HIGGINS, JR., DEPUTY GENERAL COUNSEL
JOHN C. TRUESDALE, EXECUTIVE SECRETARY
LEE D. VINCENT, COMPTROLLER

PREPARED STATEMENT

Senator INOUYE. Our next witness is Mr. John R. Van De Water, Chairman of the National Labor Relations Board.

Welcome. We have received your statement, and without objection, your statement will be made a part of the record.

[The statement follows:]

STATEMENT OF JOHN R. VAN DE WATER

I welcome this opportunity to appear before you as Chairman of the National Labor Relations Board to present the Agency's budget request for Fiscal Year 1983. This is my first appearance before this Committee and I am pleased to be here. In accordance with standard procedure, the Agency has already submitted to you a detailed, written Fiscal Year 1983 Justification. But, with your permission, I would like to touch briefly on some of the significant highlights of that justification and make a few other observations as well.

For Fiscal Year 1983, the NLRB is requesting an appropriation of $133,000,000, compared to 1982 funding of $115,200,000 provided by the current, Third Continuing Resolution. The $115,200,000 does not include the current estimate of $2,400,000 for a Pay Act supplemental appropriation which we expect to be requested later this year. An increase of this magnitude underscores the pivotal role that the Administration expects the NLRB to assume in assuring that economic recovery will not be interrupted by unresolved labor strife. It is important that the NLRB be adequately funded in order to meet this challenge.

The Budget presented to you today projects that the NLRB's case intake in 1983 will increase to a new record level. In Fiscal Year 1981, unfair labor practice (ULP) case intake was 43,677 cases, only a few hundred short of 1980's record. Representation (R) case filings were 12,588, down about 6.4 percent. For 1982, our budget projects a total intake of 45,206 ULP cases and 13,029 R cases, a 3.5 percent increase for each. However, the Agency's actual first quarter 1982 ULP case intake has decreased by about 10 percent from the first quarter of 1981, probably as a result of the state of the economy. The 1982 R case intake in the first quarter is about 27 percent below last year. Again, it seems that the recession is a major factor. The combined reduction in 1982 first quarter workload is about 14 percent. The ULP and R case intake shortfall in 1982 is proving to be fortuitous, as the reduced workload is enabling the NLRB to save substantial sums of money that normally would be needed to pay for casehandling and related expenses such as travel, reporting costs, and witness fees. There also has been an extraordinary achievement by the Agency's field office personnel, in cooperation with our Division of Judges, in achieving a first quarter settlement level of about 96 percent, compared to the traditional level of about 83-86 percent. Coupled with other cost-saving measures, it seems more and more likely that the Board will be able to keep its highly trained and motivated workforce intact during Fiscal Year 1982's severe budget constraints, constraints which otherwise might require a RIF, although the necessity for short-term furloughs is still unresolved.

Our case intake history tells us that this unusual decline in cases filed should not be expected to continue. A rebounding economy is likely to generate higher intake for the remainder of FY 1982, continuing into FY 1983. Accordingly, total unfair labor practice case intake is estimated to be 46,788 cases in Fiscal 1983, and representation filings are expected to reach 13,485.

I have been Chairman of the Board since August 1981. Soon thereafter, the Agency was immersed in financial problems of unprecedented scope. Together with the General Counsel, the Board moved immediately to reduce and control all Agency costs. We revoked all hiring commitments and new hiring was frozen for the remainder of the year. Term appointments are being permitted to end without renewal. Transfers will be permitted only to fill critical vacancies. No temporary assignments of employees between geographical areas are contemplated. Training has been reduced about 95 percent, including all training conferences. The Board is even deferring the printing of bound volumes of its decisions. Aid in controlling 1982 operating costs has also come, as mentioned, from unexpected quarters: an unprecedented decline in case filings and a temporary rise in the Agency's already high settlement rate.

There are no certainties at this point. My staff and I, along with my colleagues on the Board, and the General Counsel and his staff, are monitoring case intake, settlements, and costs on a daily basis. At this time, it appears that we will be able to avoid RIFs or furloughs, although only by implementing emergency measures which, while not deeply harmful to the Agency in the short run, cannot be maintained indefinitely.

In my short time as Chairman, I have been impressed by the dedication of the Agency's workforce and the overall effectiveness of Agency operations, as singularly pointed out from among government agencies by both OMB and OPM. The immediate challenges confronting the Agency are to continue to improve on this high level of Agency performance, while minimizing the expense to the Federal Treasury. Costs, of course, cannot be reduced to zero. Enforcement of the Nation's basic labor statute will always bear a cost. However, it is money well invested with immediate benefits far beyond the expense of administration, as I pointed out earlier in my statement. The achievement of labor harmony made possible by the Board's processes, coupled with this Agency's long record of excellent management, should assure the Congress that the taxpayers' money is well invested.

Turning now to the funds we seek for 1983, the budget request before you represents the current estimate of: the number of cases we will receive in 1983; how the cases will be disposed of (that is, by settlement, dismissal, withdrawal, hearing, etc.); the number of staff needed based on current and targeted rates of productivity; and, finally, the direct and support costs required to handle the anticipated caseload.

The major portion of increased 1983 funding is sought for additional employment to enable the Agency to have sufficient staff to process its expected 1983 caseload. The gross increase is just over 13 percent. This includes, for example, all forms of compensation, including employee transfer costs, essential training, incentive and other performance awards and bonuses, and catching up on unpublished bound volumes, items which were temporarily suspended in 1982. Most of the remaining funds are necessary to meet the costs of additonal hearings, including witness fees and reporting costs, casehandling investigation expenses, and announced cost increases on items such as existing leases for Agency space.

The average employment increase requested for 1983 is 13.8 percent. For example, a 1983 increase in employment is essential to enable the Agency's Division of Administrative Law Judges to reduce its trial backlog, which still exceeds 2,900 cases. The Agency must also rebuild its field staffs which have been depleted by the self-imposed freeze on hiring and the inroads of attrition. In light of the record intake forecast for 1983, it is critical to deploy a sufficient staff in the Agency's field offices to avoid large increases in backlog. Delayed cases don't go away; they must still be handled, but almost always at a higher cost. With the passage of time, the disputants' attitudes harden, witnesses often relocate, and it is more difficult to determine facts long after the event. The General Counsel has statutory responsibility for the investigation and prosecution of cases, and for supervision of regional office personnel. He will separately be addressing these concerns.

ADMINISTRATIVE LAW JUDGES

The Agency's Administrative Law Judges have maintained a high level of productivity in 1981. Our updated figures show that the Judges issued 1,255 decisions, closed 1,221 hearings, and obtained 699 settlements in 1981.

A significant factor in the Agency's casehandling success is the emphasis within the Division of Administrative Law Judges, and in the operations under the responsibility of the General Counsel, on settling cases whenever possible. This settlement emphasis is critical because every 1 percent increase in the number of meritorious case settlements saves the Agency about $1.25 million in litigation costs, given the fact that these cases would not only have to be tried before an Administrative Law Judge, but many would be appealed to the Board and the Circuit Courts of Appeals as well.

We expect to recruit a number of qualified Judges in 1983 to bring the staff complement up to its full 130-Judge strength. All Agency hiring was suspended in 1982. Attrition, thus far, has reduced our complement of Judges to 115, so recruitment of Judges is a particular priority for 1983. Additionally, we are preparing to implement the deferred 1982 program to provide Agency Judges with fully qualified legal assistants under their supervision to speed decision writing. The assistants will pay for themselves if we can reduce a Judge's average per-decision writing time by only 3 days.

BOARD MEMBERS' STAFFS

Turning now to the Board Members' workload, under present Budget estimates the Board will be faced with the sizeable task of deciding 1,242 contested unfair labor practice cases in 1982 and 1,643 in 1983. In 1981, the Board decided 1,028 unfair labor practice cases and 538 election cases. Present estimates call for the Board to decide more than 695 contested representation cases in 1982 and 718 in 1983.

In addition to the contested election cases, the Board also rules on several hundred other appeals and requests for review of decisions by the Regional Directors.

CONCLUSIONS

This is a respected Agency with a long tradition of effective service. It is an Agency that has risen to meet the challenges of limited funds and a growing caseload by steady increases in productivity. The Agency's accomplishments over the past decade have deeply impressed me. As Chairman during these first years of a new decade, I pledge to do all in my power to sustain the NLRB's tradition of service. With the understanding and assistance that this Committee has provided us in the past by approving for the NLRB the necessary staff and funds, I am convinced that the Agency will continue to be able to resolve labor disputes quickly and thereby minimize disruptions to the Nation's economy. I pledge that we will do so in a fair and cost-effective manner.

Thank you.

STATEMENT OF WILLIAM A. LUBBERS

Mr. Chairman and distinguished members of the Subcommittee: As NLRB General Counsel, I appreciate this opportunity to testify before you in support of the National Labor Relations Board's budget request for Fiscal Year 1983.

The budget request for Fiscal Year 1983 is $133,000,000. This budget request represents an increase of $17,800,000 over the Continuing Resolution funding of $115,200,000 which the NLRB anticipates for Fiscal Year 1982. The $115.2 million does not include a 1982 pay act supplemental, currently estimated to be $2,400,000, which is expected to be submitted later this year. The total net figure for Fiscal Year 1982 is $117.6 million, and the net requested increase of $15,400,000 represents an increase of slightly over 13 percent above Fiscal Year 1982. The $133,000,000 will provide funds to support an average employment of 3,050 in Fiscal Year 1983. This employment, in turn, will be needed to carry out the casehandling and related functions of the Agency. Total unfair labor practice case intake for 1983, all of which is initially processed in one of the regional offices under the responsibility of the General Counsel, is estimated at 46,788. Similarly, representation petition filings are expected to reach 13,485.

As part of the normal budget process, the Agency has already submitted to you a detailed written "Justification of Estimates for Fiscal Year 1983". Chairman Van de Water has touched briefly on significant parts of that Justification and provided the outlook for the entire Agency. Because of the importance of the Office of the General Counsel in the casehandling and administrative functions of the Agency, I would like to take this opportunity to review the responsibilities of the G.C.'s office, highlight our accomplishments for Fiscal Year 1981, and talk about the outlook for Fiscal Years 1982 and 1983.

RESPONSIBILITIES OF THE OFFICE OF THE GENERAL COUNSEL

As you know, the National Labor Relations Act as amended (29 U.S.C. 141-167) provides that "the General Counsel shall exercise general supervision over all attorneys employed by the Board (other than Administrative Law Judges and Legal Assistants to Board Members) and over the officers and employees in the Regional Offices. He shall have final authority on behalf of the Board, in respect of the investigation of charges and issuance of complaints under Section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe. . ."

As a result of this statutory authority, the General Counsel supervises the Agency's field establishment of thirty-three regional offices and in that capacity receives unfair labor practice charges, investigates such charges, determines their merit, and settles or prosecutes them. Under authority delegated by the Board, the Regional Directors also receive and process representation petitions; determine appropriate units; conduct elections; resolve allegations of objectionable conduct, and certify election results. Additionally, the G.C. enforces Board decisions administratively or by litigation in the Circuit Courts of Appeal.

A closer look at the NLRB's casehandling "pipeline" will help to underscore the principal challenges to the effective operation of the Office of the General Counsel. The Agency has no real control over its case intake; it must respond to all inquiries concerning possible violations of the National Labor Relations Act. These inquiries are made at our thirty-three regional offices, 3 sub-regional offices, and 16 resident offices.

When an unfair labor practice charge is filed, it is investigated for merit and, if found to be meritorious, the parties are encouraged to settle without further action.

Non-meritorious cases are dismissed or withdrawn. If a case is found to have merit and no initial settlement is reached, then a complaint is issued and a hearing held before an Administrative Law Judge. Following the hearing and the Judge's decision, there may be further appeals to the Board and the Courts of Appeal. At any point in the process, the parties may reach a settlement agreed to by the Agency, alleviating the need for further proceedings. Even in this highly simplified picture of the Agency's case "pipeline" it is apparent that as the Agency's casework progresses from initial investigations by our field staff to possible litigation work at the Board level, the drain on Agency resources becomes more and more severe. In fact, a recent analysis has shown that a decrease of 1 percent in the settlement rate for meritorious cases may result in an eventual additional cost to the Agency of more than one million dollars by the time all of the additional work generated thereby is processed to final resolution.

The nature of the case "pipeline" and the resultant workflow is such that the Agency is faced with three principal challenges in its ongoing efforts to fulfill its role to help facilitate the nation's economic growth. These challenges are: first, to reduce the number of case filings by carefully screening out non-meritorious cases; second, to maintain the NLRB's traditionally high settlement rate; and third, to continue to develop more efficient means of casehandling in order to fairly process the maximum number of cases, given the amount of available budget authority.

In order to meet the first challenge, the Office of the General Counsel utilizes an intensive public information officer program in our field offices. This program serves to carefully screen out non-meritorious cases at an early stage, thus reducing the amount of Agency resources which would otherwise be expended in resolving these charges. The effectiveness of this program is demonstrated by the fact that during Fiscal Year 1981 this Agency's field offices handled approximately 197,000 such contacts by the public; of these inquiries only about 14,200 resulted in the filing of an unfair labor practice charge. It is through the Regions' administration of this important program that tens of thousands of persons are provided with guidance as to what this Agency can and cannot do for them. Also, through this program the Agency can act to minimize the chances of unnecessary case filings which drain away limited resources. The second challenge, increasing the number of settlements, involves a great deal of preparation, time, and effort on the part of Agency casehandling professionals, including field examiners, attorneys, and top Regional management. Before, during and after hearings, the Administrative Law Judges will also aid the parties in an effort to reach an equitable settlement. Success in this area is essential in reducing the economic impact of labor unrest and to reduce Agency operating costs.

The final challenge faced by the Office of the General Counsel and the rest of the Agency is the ongoing necessity of quickly processing the maximum number of cases within the NLRB's budget constraints with fairness to all concerned parties.

Accomplishments in Fiscal Year 1981

The record of the Office of the General Counsel in 1981 reflects the careful attention we give to our obligations under the NLRA and to our obligation as stewards of public funds.

1. Case Intake. The Regional Offices accepted and began processing approximately 57,265 total cases. The 43,677 unfair labor practice cases represented a slight decrease of 0.9 percent from the record 44,063 filed in Fiscal Year 1980. There were 12,588 representation cases filed, a decrease of 6.4 percent from 1980.
2. Unfair Labor Practice Case Dispositions. Of the unfair labor practice charges filed, 34.1 percent were found to have merit; this is down slightly from the 34.6 percent in 1980. The settle-

ment rate was a record 85.6 percent, up from 82.3 percent in 1980. A record 6,250 complaints were issued in a median time of 45 days, a one-day reduction from 1980. The Agency closed 55,500 cases, a 0.2 percent decrease from 1980.

3. Litigation Results. The 80.8 percent of Board and Administrative Law Judge decisions won in whole or in part improved slightly over the 80.7 percent achieved in 1980.
4. Representation Case Performance. The regional offices conducted 8,200 elections of which 82 percent were pursuant to agreement of the parties; in Fiscal Year 1980 there were 8,350 elections and a 79.9 percent agreement rate. Regional directors issued 1,830 decisions in contested cases after hearing in a median time of 39 days as compared to 1980 when there were 1,736 decisions issued in a median time of 41 days. There were 2,137 initial representation and union deauthorization hearings in 1981 as compared to 2,003 in 1980.
5. Productivity. The field offices accomplished their work with a productivity rate increase of about 2.2 percent in 1981 over 1980.
6. Injunction Activity. The Division of Advice processed a record 301 requests for Section 10(j) relief during Fiscal Year 1981; this is an increase of 29 over 1980. Injunctions were sought and authorized in 71 of these cases as compared to 81 in 1980.

   The Regional Offices filed 190 petitions for Section 10(l) injunctions with the appropriate U.S. District Courts. In 1980, 195 petitions were filed.
7. Appellate Litigation. In Fiscal Year 1981, 471 cases were decided by the United States Courts of Appeals compared with 450 in Fiscal Year 1980. Of these 80.5 percent were won in whole or in part compared to 76.4 percent in Fiscal Year 1980; 5.9 percent were remanded entirely compared with 6.2 percent in Fisal Year 1980; and 13.6 percent were entire losses compared to 17.3 percent in Fiscal Year 1980.

These are only a few of the highlights. Many other examples could be cited to show the effectiveness of the Agency's Washington and Field staffs. The Justification provides additional material.

Outlook for Fiscal Year 1982

Fiscal Year 1982 has seen new dimensions added to the concerns of the NLRB and the Office of the General Counsel. As needs to reduce government spending increased, this Agency, among others, was asked to absorb substantial budget cuts. The NLRB's immediate concern was to try to keep its highly specialized work force intact while still maintaining the traditionally high standards of casehandling. When asked to sustain a substantial budget reduction, the Agency responded immediately with a series of operational decisions designed to cut costs. Training programs and conferences, nonessential health services, work details, the employee exchange program, and a variety of other activities were immediately cancelled or suspended for the Fiscal Year. There have been no unavoidable hires this fiscal year, and positions lost due to attrition have not been filled. These policies will remain in effect through the remainder of Fiscal Year 1982, if necessary. Concurrent with these and other cost-saving measures which the Agency has instituted, all of our employees were apprised of the need for cutting costs and asked to apply cost-saving measures whenever it was possible to do so without impairing essential services.

At the same time, the current economic recession has, in part, contributed to a 10 percent decrease in unfair labor practice case intake from the first quarter of Fiscal Year 1981 and a 26.8 percent decline in the number of representation petitions filed. These factors, coupled with the cost reduction efforts of our employees, the sharp reduction of programs which are not immediately essential, and an extremely high settlement rate have permitted a large reduction in Agency costs thus far this fiscal year. As a result, the NLRB is cautiously optimistic that it can reduce its expenditures to fall within the current year's budget restraints without the need of imposing reductions-in-force or furloughs. If this proves to be the case, there will be no significant reduction in the high quality of work which you and the rest of the country have come to expect of the NLRB. However, time delay could slip some later this year if, as normally occurs, case intake surges in the spring and summer.

Despite the many uncertainties that the Agency faces in 1982, there are still a number of accomplishments thus far in Fiscal Year 1982 to which it can point with pride. The Agency's employees have helped reduce costs dramatically while maintaining their traditionallly high level of performance. The settlement rate has averaged almost 96 percent for the first four months of the current fiscal year as compared with 86 percent for all of Fiscal Year 1981. The number of hearings held, as a result, has been 279 through the first quarter of this fiscal year as compared to 356 through the same period last year and the hearing level for our Administrative Law Judges has been reduced to below 3,000 stopping a seemingly irreversible rise. The Agency has completed development of a computerized Casehandling & Information Processing System (CHIPS) which is expected to be fully operational by the end of this fiscal year. This highly specialized management information system is essential to informed decision making. The strides taken by the Agency in cost reduction, settlement rate, case and hearing backlog reductions, and other areas will leave the NLRB well prepared to meet the anticipated challenges of Fiscal Year 1983.

Outlook for Fiscal Year 1983

Our case intake experience tells us that, as the country comes out of the current economic recession, it is likely that the NLRB's casehandling burden will increase. Filings of unfair labor practice charges and representation petitions are expected to reach the current estimate. Since it is anticipated that the settlement rate will decline to a more normal level, there will be a much greater demand on Agency resources in Fiscal Year 1983.

Many of the Agency's operational decisions which are being found effective in controlling costs during Fiscal Year 1982 cannot be continued through the the Agency's operating efficiency. Recruitment practices which were discontinued in Fiscal Year 1982 must be reinstated. For example, while the position of field examiner is a very difficult one for which to recruit, we have, in the past, been successful with a cooperative education program whereby college students alternate periods of study with periods of working for the NLRB as field examiners. That program was suspended because of budgetary reasons in FY 1982. It needs to be reinstated. Additionally, the Agency's upward mobility bridge program, by which clerical employees participate in a three-year program during which they make the transition to field examiner, needs to be revitalized. In addition, it is essential that the Agency be able to hire personnel to replace people who leave and to fill additional positions left unfilled by the hiring freeze in Fiscal Year 1982.

Conferences and training are an integral part of the career development process for all Agency employees and essential to maintaining quality performance in the complex field of labor law. They have been eliminated in 1982. We need to give them very high priority in 1983. Exchange and detail programs serve the dual purpose of allowing employees to experience different types of problems and moving people to areas of the country where their expertise would be most valuable.

Reinstatement of the programs suspended as a direct result of NLRB's efforts to preserve its work force during Fiscal Year 1982 and continued efforts on the part of Agency employees to control costs while maintaining the historically high quality of work output will help ease the transition period between 1982 and 1983.

CONCLUSION

Fiscal Year 1983 will be another year of challenge for the National Labor Relations Board. However, adequately funded, the Agency can fulfill its legislated mandate to aid in the prompt and peaceful resolution of labor and management differences. In this way, the NLRB will also serve to sharply reduce the potentially serious consequences that labor strife can hold for the economy.

The budget request of $133 million which the NLRB has presented to you is a carefully reasoned estimate of the funds necessary to support the average employment of 3,050 which the President has authorized for the Agency in Fiscal Year 1983. This staffing level is required to adequately handle the expected 1983 increase in the filings of unfair labor practice charges and representation petitions.

A number of factors may cause expenses to be more or less than our original estimate. These factors include the cost of supplies, travel, meals, and lodging; case intake; the settlement rate; and the number of hearings held. The economic climate of the country may also have a significant effect on Agency operating costs. As NLRB General Counsel, I pledge that my staff and I will continue to do our best to meet the challenges that are certain to present themselves in 1983.

I would again like to thank the Committee for the opportunity to appear before it.

INTRODUCTION OF ASSOCIATES

Senator INOUYE. If you would like to introduce your associates before proceeding, please do.

Mr. VAN DE WATER. Thank you.

Our Executive Secretary, Mr. Senator, is John Truesdale, who has also been a member of the National Labor Relations Board; Mr. Lee Vincent, our Comptroller; Mr. William Lubbers, our General Counsel; and Mr. John Higgins, Deputy General Counsel.

Senator INOUYE. Gentlemen, welcome. No ladies? Just men?

HIGHLIGHTS

Mr. VAN DE WATER. I welcome this opportunity to appear before you as Chairman of the National Labor Relations Board to present the agency's budget request for fiscal year 1983. This is my first appearance before this committee, and I am pleased to be here.

In accordance with standard procedure, the agency has already submitted to you a detailed, written fiscal year 1983 justification.

But with your permission, I would like to touch briefly on some of the significant highlights of that justification, and make a few other observations as well.

For fiscal year 1983, the NLRB is requesting an appropriation of $133 million, compared to 1982 funding of $115,200,000 provided by the current third continuing resolution. This $115,200,000 does not include the current estimate of $2,400,000 for a pay act supplemental appropriation, which we expect to be requesting later this year.

On this point, I think it's well to emphasize that the anticipated gap is the result of short-term actions which were undertaken as a result of budget constraints.

However, the actions taken were in their very nature stopgap measures, the funds for which, sooner or later, must be restored to the agency's case handling processes.

LOWER CASE INTAKE

The budget presented to you today projects that the NLRB's case intake in 1983 will increase to a new record level. However, the agency's actual first quarter unfair labor practices intake has decreased by about 10 percent from the first quarter 1981, probably as a result of the state of the economy.

For 1982, our representation case intake in the first quarter is 27 percent below last year. It seems the recession is a major factor.

The combined reduction in 1982 first quarter workload is about 14 percent. Coupled with other cost-saving measures the Board has instituted, it seems likely the Board will be able to keep its highly trained and motivated work force intact during fiscal year 1982's severe budget constraints, constraints which otherwise might require RIF's, although the need for short-term furloughs is still unresolved.

We are extremely grateful that it appears possible to retain our excellent work force and, hopefully, be able to avoid RIF's and furloughs. We cannot, however, safely assume that this unusual decline in cases will continue.

A rebounding economy is likely to generate higher intake for the remainder of fiscal year 1982, continuing into fiscal year 1983. Accordingly, total unfair labor practice case intake is estimated to be 46,788 cases in fiscal year 1983, and representation filings are expected to reach 13,485.

I have been Chairman of the Board since August of 1981. Soon after I came with the Board, the agency became immersed in financial problems of unprecedented scope. Together with the General Counsel, the Board moved immediately to reduce and control all agency costs.

SPENDING CONSTRAINTS

We revoked all hiring commitments and new hiring was frozen for the remainder of the year. Term appointments are being permitted to end without renewal. Transfers will be permitted only to fill critical vacancies. No temporary assignments of employees between geographical areas are contemplated.

Training has been reduced about 95 percent, including all training conferences. The Board is even deferring the printing of bound volumes of its decisions. Aid in controlling the 1982 operating costs has also come, as mentioned, from unexpected quarters, an unprecedented decline in case filings, and a temporary rise in the agency's already high settlement rate.

SETTLEMENT RATE

Our settlement rate has gone from 83 to 86 to 95.6 percent with the aid of the work that the General Counsel can explain to you in more depth, if you wish. It's been an amazing change.

IMPACT TRAINING FUND CUTBACKS

Senator INOUYE. What impact does the lack of training funds have on your staff?

Mr. VAN DE WATER. It is temporary in nature. It must be temporary. As we meet the need for 1983, we will need additional personnel to recover from the effects of attrition and our hiring freeze.

As we plan for the future, we will have to train people in how to handle cases, in every aspect, all the way down the line.

Senator INOUYE. You are able to handle your backlog with this?

Mr. VAN DE WATER. We feel we will be able to handle our backlog, based upon the original prognostication. With the unexpected reduction of 14 percent in the case filings, we will be able to handle our backlog, so long as in fiscal year 1983 we will be able to bring the Board back to full strength as it should be.

For example, the number of administrative law judges currently onboard is well below the number earlier projected for our agency. We will need to see that we are ready to recruit the additional judges needed to be able to carry out our job across America satisfactorily.

As you know, Senator, the Wagner Act was passed to overcome a situation of enormous strife in labor-management relations in the country. That was passed to give opportunities for employees, should they want a union, to have the chance, without self-help techniques, to gain that union.

Then, in 1947, there came limitations placed on unions. There have been other changes made in 1959. But in all of these changes, the aim has been always to add to the Board's capability to act in a quick manner, to avoid the need for self-help techniques by labor, and to see that we do our job by proper case handling to aid the economy and assist in saving billions of dollars through the work of the National Labor Relations Board.

FILING OF CHARGES

Senator INOUYE. Are you discouraging the filing of additional cases?

Mr. VAN DE WATER. Not at all. The Board has no limitation allowed to it, nor does it wish to have a limitation on parties filing charges with it.

We do not discourage filings. We do—what we do through our information officer program—again, that the General Counsel can explain, because it is his responsibility and, therefore, more within his knowledge. Our information officers explain to the tens of thousands of people yearly who wonder whether the Board can help them, what the limitations on our authority are, and to seek, at the same time, to gain settlement where merit is found in charges filed, avoiding the process of long hearings and appeals, which saves our funds as well as the U.S. Treasury.

And, also, to aid the human relationships by having parties settle these things among themselves rather than by legal processes, if possible.

INFORMATION OFFICER PROGRAM

Senator INOUYE. May I hear from the General Counsel?

Mr. LUBBERS. With respect to the filing of unfair practices charges, we do have an information program. Last year, we received 200,000 inquiries, either by mail, personal visit, or telephone, from individuals for the most part, although in some cases, unions, and employers, with respect to a labor dispute or a work-related grievance of one sort or another, inquiring whether or not the National Labor Relations Board's processes were available to resolve those grievances.

Our people have been instructed to inquire into the nature of the grievance and to the extent it is possible—and in many cases it is possible—to see that these people are coming to us with respect to a dispute that we have no jurisdiction over, that the statute does not cover.

We, at that point, try to guide the people to other agencies, Federal, State, or local, so that they can have a better chance of having their inquiries addressed by the responsible people.

From the almost 200,000 of such inquiries, we received 14,000-and-some unfair labor practice charges. The rest of them were successfully referred to other places or the people were told, "Well, you may have a dispute at your workplace, but it is not something we can do something about."

During the course of the year in 1983, we expect almost 47,000 unfair labor practice charges. We expect to receive, as well, over 13,000 petitions for election-representation cases. That number, plus the almost 200,000 inquiries that I mentioned before, demonstrates the faith that the working men and women in this country have in the National Labor Relations Board and their belief that it discharges a very important function in the resolution of disputes.

Congress, in establishing the Board, declared it to be the national policy to eliminate obstacles to the free flow of commerce, to guarantee employees the rights of free and full association, for the purpose of collective bargaining and the like. We have no jurisdiction to go out and seek cases. Our jurisdiction attaches only when somebody has come to us.

PROCESSING UNFAIR LABOR PRACTICE CHARGES

The unfair labor practice charges filed with us in our regional offices are handled initially by people under my supervision. Over 90 percent of those charges are disposed of in a median of 45 days. About a third, or maybe 35 percent, of those cases are found to have merit, and in many of those cases, complaints will issue.

Of the merit cases, historically, from 82 to 85 percent are settled without formal litigation. As the Chairman mentioned, in the last 4 or 5 months we have been settling cases of that sort at the rate of over 90 percent.

REPRESENTATION CASES

Of the representation petitions that come before us, over 80 percent are resolved without a hearing, by the parties signing consent agreements to go to election, and then the matter is resolved in that way.

It is obvious to us, and I think it is obvious to the Congress, that the speedy and effective resolution of these disputes is a primary requisite if we are going to eliminate the obstacles to commerce that flow from labor disputes unresolved and festering and perhaps flaring up into work stoppages. I can say with full confidence that if the funding of the President's request for the National Labor Relations Board is given to us by the Congress, that in the year ahead we can continue the very fine work and the traditional work that the agency has done in disposing of these disputes in a speedy and effective manner.

STAFF SIZE

Senator INOUYE. I commend you, sir.

How large is your staff?

Mr. LUBBERS. The total employment force of the agency at this point is something over 2,700 people, between 2,700 and 2,800 people. About 1,800 of these are under the supervision of the General Counsel. We have 33 regional offices around the country. Some of them have subregional and resident offices, as we have in Honolulu, for instance, a subregional office out of San Francisco regional office.

Senator INOUYE. So you handle 200,000 inquiries and about 15,000——

Mr. LUBBERS. About 60,000 formal cases per year, if we get the funding that is necessary for that, sir.

Senator INOUYE. It must be like an assembly line.

Mr. VAN DE WATER. We have been trying to save a great deal of money by many methods, sir, this last year, and have succeeded in doing so. Some of them will, of course, be continued, but some cannot.

Because of the tremendous importance of maintaining contact with the American Bar Association to learn from them and to teach them, so we can work together effectively with those in the private economy—we even gave up the opportunity this year to go to Molokai and participate with the American Bar Association in their convention and instead we met with them in advance in Washington, and we will have a post mortem with them when they come back. So, we will not go to your home State, becaue of self-imposed limitations on expenditures.

Mr. LUBBERS. One of the reasons we can be as effective as we are is because we do get a substantial amount of cooperation, even from those charged with unfair labor practices that come before us. Our processes and procedures are very open. They are well known, and the people, for the most part, believe in the fairness of our procedures and the impartiality of our people.

This requires a tremendous amount of training of our staff, which we have deferred, as the Chairman mentioned. It requires a dedicated employment force, which we do have, and a constant striving to work as quickly as we can but to get into the case as thoroughly as possible.

Mr. VAN DE WATER. Mr. Chairman, this is the end of my presentation unless you have additional questions, except to emphasize the fact that as we move into fiscal year 1983, many of the things which have been postponed must be reinstituted in order to be able to see that we continue to handle our caseload in an expeditious manner, knowing that if we do not, then the private parties, both management and labor, will turn to self-help techniques, which our act was originally passed to overcome.

We do ask your indulgence and aid to see that we are properly financed to carry out our duties in 1983 and continue our effectiveness.

SUGGESTIONS FOR COPING WITH WORKLOAD

Senator INOUYE. Recently, we had a panel of attorneys with special expertise in your area, and we asked them to submit suggestions on how the Board could better cope with its workload. These are their suggestions. I would like your comments on some of these.

GREATER BURDEN ON CHARGING PARTIES

The first suggestion was to put a greater burden on charging parties to produce all relevant evidence and witnesses, including greater use of investigations by telephone rather than in person by a board agent.

Mr. VAN DE WATER. On this matter, we have, for example, established a telephonic preparation of affidavits as a system, so that now we have reduced traveling costs, very substantially by having telephonic exchange with the parties whose affidavits are needed by us. We then, on the basis of the information received, prepare these affidavits, send them out, ask to have them corrected, have them notarized and sent back to us.

That kind of saving does occur. That suggestion is being utilized and being made more effective.

GREATER DISCRETION BY GENERAL COUNSEL

Senator INOUYE. Next, a greater use of discretion by the General Counsel in deciding whether to issue a complaint. Marginal cases should be dropped.

Mr. LUBBERS. Yes; there is discretion. Whether it should be used to a lesser or greater degree than other people might think is always a difficult question.

The General Counsel is bound to a great extent by what the Board has already declared the law is. In some cases where the General Counsel might well feel, on an independent view of what the law is, that a violation might exist or it might not exist, but the Board has said to the contrary, that Board law governs. We, nevertheless, do look at our cases to see whether or not the violation is perhaps de minimis or trivial and do withhold and exercise discretion in not going ahead.

I suppose that any two people could come up with differing opinions as to whether or not that discretion should be exercised in this case or not in another case.

With respect to the earlier question, the telephonic investigations, which, again, is really within the purview of the General Counsel's office, the Chairman gave an answer which was essentially accurate. I would like to make this observation in elaboration that telephonic affidavits may be useful in some cases, particularly those cases which early on seem not to have merit. It may be useful, also, to get to the point where you realize that a greater investigation and a more direct investigation by having an investigator on the scene can do a better job. Those things are kept in mind.

It is partly our budgetary restrictions which have driven us to that practice. To the extent, I think, that some of those things are done because of budgetary reasons, while they may have some beneficial effects, they also have a cost on the other side. It is too bad, I think, if an unfair labor case is not investigated thoroughly and is dismissed because of too shallow an investigation, whether dicated by budgetary considerations or other considerations. That is the cost I refer to.

Mr. VAN DE WATER. Might I add one point?

Senator INOUYE. Please do.

JURISDICTIONAL STANDARDS

Mr. VAN DE WATER. It is not within the province of the National Labor Relations Board to determine the laws, nor, generally, to recommend what the law should be. We have had since 1959 a determination by the Congress on the types of situations over which we should take jurisdiction for both representation and unfair labor practice matters.

As inflation has occurred, quite naturally—with a regulation that would say that if a particular firm, directly or indirectly, has $50,000 of purchases or sales across State lines, we then take jurisdiction. That amount, $50,000, as set in 1959, means that now we take jurisdiction over very small enterprises. But it is not our province to say whether you wish us to continue to do this and take on smaller and smaller situations, having, perhaps, then less funds to use in the bigger labor cases of most importance to the Nation.

That is your province to decide whether to continue funding on the basis of current jursidictional standards.

Senator INOUYE. That's a recommendation, isn't it? [Laughter.]

Mr. VAN DE WATER. I raised it for your consideration, sir.

Senator INOUYE. I think it's a good one.

PROSECUTE THE REPEAT OFFENDER

The next suggestion was to have the Board prosecute the recidivists, and it need not prosecute the first timer.

Mr. VAN DE WATER. I think this would be totally wrong, in my judgment, Senator. There are very serious violations where the original violation should require immediate correction. There are people who suffer great injury if there are unfair labor practices existing by any party, sometimes at great loss to the individual.

If recidivism does occur, however, we need to be strenuous in seeing that we take additional, proper action to prevent such recidivism in the future.

REGULATION OF MATURE COLLECTIVE-BARGAINING RELATIONS

Senator INOUYE. The final suggestion was, the Board should not attempt to regulate the conduct of mature collective-bargaining relationships. Wherever possible, it should defer to the arbitration process.

Mr. VAN DE WATER. My personal view, if you were asking me, Senator, is that we should allow the process of collective bargaining to be fulfilled as broadly as possible, so long as there is no statutory violation. The law is very clear. It is the duty of the Board to aid the opportunity of establishing a peaceful collective-bargaining relationship between the parties.

The whole purpose of the Labor Management Relations Act, as amended, is to see that bargaining power is equated and either the union or management has the right to reject proposals. That being the case we want to have a situation where the opportunity for as great a settlement as quickly as possible, in a healthy atmosphere, exists.

I believe it is our duty to see that we do all that we can to aid toward that end.

Mr. LUBBERS. May I respond to that, too, sir?

Senator INOUYE. Please do.

Mr. LUBBERS. I think the difference of opinion with respect to that question is really a difference of degree rather than of kind. The Board and the General Counsel both, in many cases, do defer processing of a case and do defer to the arbitration procedures of a mature collective-bargaining relationship.

There are some people who think that perhaps the Board should establish a policy of greater deferral or that the General Counsel should follow a policy of greater or less deferral. It is really a difference of degree rather than a difference of viewpoint as to whether or not there is merit to that suggestion.

With respect to your earlier question, just before that, about recidivists and not going after the first-time violator, as I mentioned earlier, presently we are settling over 90 percent of our unfair labor practice cases. Many of them are out-of-Board adjustments where there has been a violation and the parties involved will settle that case with the approval of our regional director.

These often are first-time violations. The dispute, the matter gets redressed and the person does not have to go to formal litigation. Many of our settlements are settlements which settle that kind of case. If those settlements are violated, they can be set aside and the case processed in the appropriate way.

So that there, too, it is not a question of simply going only after recidivists and letting the first-timers go. The one bite at the apple, as the Chairman indicated, that might be a severe bite. There has to be a remedy there, too.

SUBMITTED QUESTIONS

Senator INOUYE. Thank you for appearing.

I have several other questions to submit to you for your consideration and response.

Mr. VAN DE WATER. Thank you very much. We appreciate this opportunity.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

HANDLING BACKLOGS

Question: If the Board finds itself unable to secure funding for additional Administrative Law Judges, more lawyers, more field examiners and more legal assistants to tackle its increasing workload, what strategies does the Board have to deal with this problem?

Answer: As you know, because of the diminished budget, the Agency has already been faced with the situation of being unable to replace staff losses in both professional and clerical positions. Our efforts to meet the prospects of an increasing backlog in the face of reduced levels of staffing have fallen into two main areas: (1) Reducing personnel and administrative expenditures, so that, despite our inability to increase staffing levels, we have been able to allocate an increased proportion of Agency resources to direct casehandling activities; (2) Modifying Agency casehandling procedures to minimize cost and maximize the amount of staff time available for case investigation, litigation, settlement and other direct casehandling activities.

Some of the measures which the Agency has already taken in area (1) include: (a) suspension of all intra-Agency transfers of employees between field offices and between the field and Washington headquarters; (b) suspension of virtually all intra-Agency work details between those offices; (c) cancellation of all arrangements for the acquisition or expansion of space (d) suspension of all Agency training conferences and managerial conferences: (e) substantial reductions in paid overtime: (f) substantial curtailment of administrative travel; (g) cancellation or suspension of many periodical subscriptions: (h) curtailment of long distance commercial telephone calls, telegrams, teletypes, express mail, facsimile transmission and photocopying.

The steps which the Agency has taken in area (2) bear more directly on the manner in which we are processing our cases so that maximum utilization can be made of the limited staffing resources available to us. These steps include: (a) encouraging parties to bring evidence and witnesses into the Regional Offices rather than conducting a "field" investigation; (b) use of telephonic affidavits in clear no-merit cases; (c) conducting unfair labor practice hearings and representation hearings in Regional Offices whenever possible; (d) elimination of routine field checks on compliance with notice posting requirements; (e) introduction of new settlement techniques in a re-intensified settlement program; (f) re-emphasis of the program for discouraging the filing of clearly nonmeritorious charges; and (g) substantial reduction in casehandling travel.

Because the litigation of unfair labor practice cases consumes a disproportionately large amount of Agency staffing resources, the actions we have taken to further enhance our settlement program deserve special mention. As in the past, every meritorious case that is not settled by the Board agent directly assigned to the case is reviewed by Regional Office supervisors and a specially designated Settlement Coordinator who often becomes directly involved with the parties in an attempt to work out a settlement which is acceptable to the parties and which carries out the purposes of the Act.

In addition, we have recently adopted two settlement techniques which have proven successful. First, we have implemented a Regional Director Settlement Conference program where each Regional Director personally invites the parties to a case into the Regional Office for a conference with the Director one month before the scheduled trial. The experience and reputation of our Directors in their respective labor-management communities has enabled them to successfully settle a large number of difficult and complex cases. Second, we have a conference-call settlement program carried out by the assigned Administrative Law Judge the week before trial. Our Judges have been successful in settling many cases through this procedure, obviating the need for travel in cases which would otherwise settle "at the courthouse steps." While the measures we have taken represent in themselves a large investment of staffing resources, our settlement rate has risen to approximately 95 percent over the past several months. Such a high settlement rate represents tremendous savings since a case that is litigated and requires a Board decision represents not only investigative time but also litigation and briefing time by the trial attorney; hearing, research and decision-writing time by an Administrative Law Judge; review, research and decision-writing time by Board members and the attorneys on their staffs; and, on occasion, similar preparation and litigation expense at the court level.

All of the above efforts have saved the Agency both funds and staff time. As a result, we are dedicating a greater percentage of our available staff time directly to case investigations and dispositions. Our success in these areas, in addition to a decrease in caseload, has enabled the Agency to keep abreast of its case filings notwithstanding reduced resources. Nevertheless, many of our suspended activities such as training, administrative travel, transfers, etc., must be viewed as short-term measures.

While we intend to continue those measures which have resulted in economies of operation and which have enabled the Agency to cope with current caseload, this Agency cannot forego indefinitely the resumption of programs necessary to maintain the quality and efficiency of casehandling, as well as the proper training of personnel.

The following are cost saving measures which we have considered or are currently considering. We are currently giving consideration to the use of resident agent employees stationed in more geographically dispersed areas, as well as stationing Administrative Law Judges in some Reigonal Office cities, in order to minimize travel while retaining accessibility to the public. Finally, we are currently studying the possibility of redefining the geographic boundaries of our Regional Offices in order to ensure that most areas are served by the particular Agency office most accessible to them.

CONTROLLING CASELOAD

Question: For the last several years we have heard testimony from NLRB representatives about the ever-increasing number of cases filed, and now a growing backlog of cases. What is the Board doing to handle this increasing caseload?

Perhaps more important, what is the Board doing to discourage the filing of additional cases?

Answer: We have noted, in answer to previous questions, the cost-cutting measures we have instituted and those that are currently being considered so that we may continue to process our caseload in the face of diminished resources and budget limitations. With respect to the question of what we can do to directly discourage the filing of additional charges, any person who wishes to file a charge under the Act may do so. Thus, although we may attempt to discourage the filing of a charge where it appears that the Agency would have no jurisdiction over the matter or the complaint is clearly non-meritorious, a person who insists on filing such a charge must be permitted to do so.

However, we have recognized that there are a certain number of complaints brought to the NLRB Regional Offices which, upon very little investigation, are clearly without merit or clearly not within the jurisdiction of the NLRB. If we were to receive a formal charge in every such instance, our caseload would be much greater and would require a great deal more money to avoid the build-up of a "backlog". To avoid such a situation developing, we have continued our Information Officer Program as a means of screening out of the investigative process those matters which are clearly without merit or not within the jurisdiction of the NLRB. A member of each of the Regional Office staff is designated, on a daily basis, to serve as Information Officer. That person is charged with the responsibility of receiving all incoming visitors to the office and all information telephone calls. The Information Officer will obtain, in as informal a way as possible, all relevant information pertaining to the nature of the inquiry, and if, in the judgment of the Information Officer and/or his or her supervisor, the matter is clearly without merit or not within the jurisdiction of the NLRB, every effort is made to avoid a formal filing by the inquiring party. Of course, if the inquiring party requests a formal determination, the Information Officer will accept the formal charge, and provide whatever assistance is necessary to prepare charge forms.

The Information Officer Program, while in existence for many years, was given program priority in 1979. In FY 1980, we received a total of 177,200 Information Officer inquiries which resulted in 16,033 charges being filed, or 9.2 percent of all IO contacts. In FY 1981, we received 197,421 IO inquiries (an 11.4 percent increase over FY 1980) which resulted in the filing of 14,213 charges or 7.2 percent of all contacts. Thus, although the number of IO inquiries in FY 1981 was substantially greater than the number in FY 1980, the number of charges resulting therefrom was substantially less.

In order to assure that the Information Officer Program is properly carried out at the Regional Office level with the necessary emphasis, the Office of the General Counsel has designated it as a priority program.

WAYS TO REDUCE VIOLATIONS OF LABOR LAWS

Question: Are there no ways, short of statutory amendments, in which the Board can take the "profit" out of violations of the labor laws?

Answer: "Profit" in the violation of labor laws is possible if a labor law violator is permitted to escape without having to remedy its violations and/or if time delays in processing cases are such that the remedies provided are ineffective. Where the situation permits, General Counsels have sought, and the Board has granted, expanded remedies against repeat violators. Such remedies include corporate-wide cease and desist orders and reimbursement for litigation expenses. See, for example, J. P. Stevens, Inc., 240 NLRB 33, 247 NLRB 420 and Florida Steel Corporation, 231 NLRB 651. In cases involving a recidivist, the Agency normally will not accept less than a formal settlement which permits the Agency to obtain a Court decree and to treat the settlement as though it were a finding of a violation. The Board's indexing of interest on backpay to the rate established by the IRS, which is currently at 20 percent, should be a substantial deterrent in cases calling for a backpay remedy.

The best way to assure that no one "profits" from violations of the labor laws is to take swift, immediate, effective action against those who do. This can be done only if the Agency is given adequate resources to pursue that task.

Question: Under Section 10(j) of the National Labor Relations Act, the Board may, at its discretion, seek a temporary restraining order halting a possible violation of the Act. Why doesn't the Board more vigorously use Section 10(j) injunctions as a means of stemming the increasing number of violations?

Answer: Section 10(j) is an extraordinary remedy to be used only in those cases where there is a compelling need for injunctive relief while the case is being litigated before the ALJ and the Board. There is a need for caution in the use of this provision inasmuch as it operates to compel a respondent to take certain remedial steps before a final determination of whether the respondent committed an unfair labor practice. In order to secure such relief, it must be shown that there is reasonable cause to believe that a violation has occurred, and that injunctive relief is just and proper.

Given the foregoing considerations, we do not believe that we have underutilized Section 10(j). Indeed, in recent years we have used 10(j) with increasing frequency. The following data supports this conclusion:

PERIOD	NUMBER OF SECTION 10(j) AUTHORIZATIONS PER YEAR
1947 (10(j) enacted to June 30, 1971)	9.2 (approximate)
July 1, 1971 to June 30, 1975	21
July 1, 1975 to June 30, 1979	48
July 1, 1979 to June 30, 1980	75
July 1, 1980 to June 30, 1981	83

Finally, it should be noted that, in recent years, the Agency has made a determined effort to explain its Section 10(j) policies to the public. Since 1975, each General Counsel of the Board, at the end of his tenure, has issued a report describing the cases in which Section 10(j) relief was sought as well as the results obtained. In addition, the General Counsel's Quarterly Report sets forth the number of cases in which the Board has authorized Section 10(j) relief in that quarter, the kinds of cases involved, and the results obtained.

NATIONAL MEDIATION BOARD

STATEMENTS OF:

ROBERT J. BROWN, CHAIRMAN
ROBERT O. HARRIS, BOARD MEMBER

SUBCOMMITTEE PROCEDURE

Senator INOUYE. Next to testify is Mr. Robert Brown, Chairman of the National Mediation Board.

Welcome. Will you introduce your colleague before you proceed? I can't quite recall his name.

INTRODUCTION OF ASSOCIATE

Mr. BROWN. I introduce Mr. Robert O. Harris, a board member of the National Mediation Board.

Senator INOUYE. Welcome. It is good to see you.

Mr. BROWN. My name is Robert J. Brown. I am the current Chairman of the National Mediation Board.

Mr. Chairman, I would like to submit my statement for the record, and summarize it if I may.

PREPARED STATEMENT

Senator INOUYE. Your statement will be made part of the record, without objection.

[The statement follows:]

STATEMENT OF ROBERT J. BROWN

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE. Thank you for this opportunity to appear before your Subcommittee today regarding the National Mediation Board's budget for fiscal year 1983.

The total amount requested for fiscal year 1983 to administer the Railway Labor Act is for a personnel complement of 60 positions and $3,618,000, $1,140,000 less than is available in fiscal year 1982. This budget reduction is due to the removal of the provision for referee compensation and travel expenses under section 3 of the Act.

The appropriation for the National Mediation Board is requested for expenses necessary to carry out the provisions of the Railway Labor Act, as amended. The Act is administered by the National Mediation Board. This statute was designed to provide orderly procedures for the settlement of labor disputes in the railroad and airline industries. Additionally, the Mediation Board handles questions of representation as they arise in these industries and interprets agreements made in mediation.

When the Railway Labor Act was amended in 1934 it established the National Railroad Adjustment Board for the purpose of disposing of grievances arising under the terms of collective bargaining agreements in the railroad industry.

On June 20, 1966, the President signed Public Law 89-456, which further amended certain provisions of section 3 of the Act. Under the Public Law, new grievances and those which have been on docket before the National Railroad Adjustment Board for a period of at least one year may be referred to a local board of adjustment. The purpose of this amendment was to reduce an overwhelming caseload of unresolved disputes pending before the National Railroad Adjustment Board. Beginning in fiscal year

1983, the President's budget proposes that referee salary and expenses will be paid by the parties.

The budget justification, as submitted, identifies the functions just discussed and the amounts requested for each. I would like to go over each one briefly.

Mediatory Services

For mediatory services for fiscal year 1983 we are requesting $3,034,000, an increase of $310,000 over last year due to mandatory changes. These services which are the responsibilities of the National Mediation Board, involve the making and amending of collective bargaining agreements, the selection by employees of their bargaining representatives, as well as a number of administrative duties consistent with statutory authority under the Act, and related statutes governing railroad and airline labor disputes procedures.

Voluntary Arbitration and Emergency Disputes

The second activity of the Mediation Board relates to voluntary arbitration and the investigation of critical disputes through the emergency board procedure. In arbitration proceedings, disputes are voluntarily submitted by labor and management to a neutral party for final and binding decision.

Emergency boards are created by the President pursuant to section 10 of the Act. When the Mediation Board finds that a dispute threatens substantially to interrupt interstate commerce and deprive any section of the country of essential transportation, it notifies the President who may create an emergency board to investigate and make recommendations as to the settlement of the dispute.

The Mediation Board is requesting $184,000 for these activities, the same amount as allocated last year.

The request for an additional $400,000 results from new statutory obligations placed upon the Board by the Omnibus Budget Reconciliation Act of 1981. That Act amended the Railway Labor Act by adding a special emergency dispute procedure for publicly funded and operated commuter carriers and their employees. Under this new procedure, the President would be required, upon request of any party to a labor dispute, including the Governor of the State, to establish possibly two separate emergency boards to help in resolving the issues in dispute.

Boards of Adjustment

As indicated earlier in my statement the Mediation Board administers Public Law 89-456, which amended certain provisions of section 3 of the Railway Labor Act.

In general, the amendment authorized the establishment of special boards of adjustment, known as public law boards, on individual railroads upon written request of either the representatives of employees or of the railroad to resolve disputes otherwise referable to the National Railroad Adjustment Board, and those disputes pending before the Board for one year. Last year an appropriation request for this activity was $909,000.

Since the President has proposed that beginning in fiscal year 1983 referee salary and expenses will be paid by the parties directly, it is proposed that the amount of $106,000 will be collected through a user charge fee to offset administrative costs. This will be achieved by a general provision in the appropriation bill covering both the NMB and FMCS which will enable and require the Board to charge a user fee for administrative handling of grievance cases and require the parties to pay referees directly for their services. Therefore no funding is requested by the President for this activity.

Adjustment of Railroad Grievances (NRAB)

When the Railway Labor Act was amended in 1934, the National Railroad Adjustment Board was created to hear and decide disputes involving railroad employee grievances and questions concerning the application and interpretation of agreements rules. Administrative responsibility and fiscal expenditures by the Adjustment Board were placed with the Mediation Board.

As already stated, the President has proposed that beginning in fiscal year 1983 referee services provided for section 3 activities will be paid by the parties. This will be achieved by the above referred to general provision in the appropriation bill. The amount of $550,000 will be collected through a user charge fee to offset administrative costs.

SUMMARY OF STATEMENT

Mr. BROWN. The National Mediation Board is requesting $3,618,000, which reflects a reduction of $1,140,000 over fiscal year 1982. The primary function of the Board under the Railway Labor Act includes mediation in connection with collective bargaining and representation matters, concerning employees of the railroad and airline industries.

For this, the Board is requesting $3,034,000, an increase of $310,000 over fiscal year 1982.

A second function of the Board relates to voluntary arbitration and the investigation of critical disputes through the emergency board procedure. The Board is requesting $584,000 for this item, $400,000 more than fiscal 1982.

This increase is attributable to the additional responsibilities given the Board by that section of the Omnibus Budget Reconciliation Act of 1981, which is entitled the Northeast Rail Service Act of 1981.

Another function is the overall supervision of the adjustment of employee grievances in the railroad industry. For this function, the administration is requesting that no funds be appropriated for fiscal year 1983, and this includes the operation of the National Railroad Adjustment Board and public law boards established under section 3 of the act.

A general provision in the appropriation will require the parties to pay referees directly for their services and for both the NMB and the FMCS to charge a user fee for administrative handling of grievance cases.

I wish to specifically indicate that I do not concur with the administration proposal in this regard, and specifically the reduction of the $1,850,000 for the public law boards and the National Railroad Adjustment Board activities.

Mr. Chairman, this completes the summary of my statement. If you have any questions, I would be delighted to respond.

ADJUSTMENT OF RAILROAD GRIEVANCES

Senator Inouye. A number of observers of labor relations in the railroad industry have suggested to us that the overwhelming volume of unresolved grievances will not be alleviated until such time as the parties and the railroad industry are forced to pay their own costs of arbitration.

In the airline and other private sector industries, the union and the companies share the cost of arbitration. They don't rely on the Federal Government to pick up the arbitration tab.

Is it a fair statement to say that half, nearly half of the National Mediation Board's budget is for subsidizing grievance arbitration in the railroad industry?

Mr. Brown. The figure, $1,850,000, that I indicated I disagreed with, with regard to the administration's request for fiscal year 1983, so it is about percentagewise I would say 35 percent of the total if you were to include the $1,850,000 compared to this year's budget.

I think importantly that there is a difference in terms of the railway industry, as the Congress recognized way back in 1926 and again in 1934 when it established the National Railroad Adjustment Board itself, and that is that it's terribly important to the commerce of this nation to keep stability in this industry, stability and tranquility in terms of its labor relations.

It's been marvelously successful. It almost challenges one's memory to think of a serious railroad difficulty in the past years.

Now, it might be the economics and the history have had a lot to do with it, but it may also be that the Congress had great wisdom and the parties themselves who were really authors in concert with Congress, as you recall, in the development of the Railway Labor Act itself.

They came to the Congress with an agreed-upon proposal back in 1926. In 1934, when they established a mechanism to handle minor disputes, grievances, they set up an arrangement whereby the Government would pay the fees.

Now, I'm not here to say to you that that is going to cause less difficulty in the railroad industry. But I am here to say that it is something I hope this committee seriously considers and consults with the parties before moving ahead.

Obviously, the National Mediation Board in its responsibilities is essentially a housekeeper for that Board. I wouldn't want to pretend to be an expert in grievance handling. That happens to be the board's responsibility.

But I would urge you to consult carefully with the parties over this matter because the history has been really wonderfully tranquil, almost a model for all other industries and at a cost of $1,850,000 for settling grievances. I'm not certain that it's not a pretty dangerous risk.

Senator INOUYE. In using the same rationale, should the Congress subsidize grievance arbitration in the airline industry?

Mr. BROWN. So far, Mr. Chairman, and history has indicated—it's unnecessary in the airline industry.

Senator INOUYE. You don't subsidize grievance arbitration in any other industry?

Mr. BROWN. No, we do not.

EMPLOYER PARTICIPATION IN NMB DISPUTES

Senator INOUYE. Some have alleged the Board has refused to regularly employ procedures which would assure that due process is accorded to all affected parties in labor relations disputes before the Board, by refusing employer participation, but requiring employer records.

Do you wish to comment on that, sir?

Mr. BROWN. Mr. Chairman, the U.S. Supreme Court held in 1965 in the *Association for the Benefit of Noncontract Employees* versus the *Brotherhood of Railway and Steamship Clerks* that carriers are not parties to NMB disputes.

With respect to that matter, as a practical matter, carriers have been afforded a broad panoply of rights in investigations and their views are actively sought.

When a case is brought following a union's application to the Board, the carrier is invited to make any comments he cares to make. Should a case go to hearing, the carrier has the right to be represented by counsel, to examine and cross-examine witnesses, to present documentary or other evidence and to file a posthearing brief.

Carriers may appeal from an adverse ruling by the hearing officer. It has been the Board's experience in recent years, in fact, that carriers presented the bulk of the witnesses and the evidence in NMB hearings.

Even in cases not involving hearings, carriers may introduce any material which they may deem relevant to this investigation. In many cases, issues are raised by the carrier which require additional investigation and many carriers provide full assistance to enable the Board to resolve these issues.

Open access to carrier records is generally offered. Carriers may file appeals or protests with the Board. For example, they may protest the Board representative's initial eligibility determination on an equal basis with the labor organization.

Furthermore, the Board has institutionalized these procedures. So I really think that that charge is without merit.

Senator INOUYE. So as far as you are concerned, due process has been accorded to the carrier or the employer?

Mr. BROWN. Yes.

Mr. HARRIS. Let me add one thing to that, Mr. Chairman. There have been in the last several years two instances where employers have raised this claim and have raised it in the courts.

In each case, the courts have reviewed the Board's action and in each case have found that the Board's action was appropriate and have ordered the production of records for the Board where the carrier refused to grant such voluntarily.

STATUS OF MAJOR CONTRACT NEGOTIATIONS

Senator INOUYE. What is the present status of major contract negotiations in the airline and railroad industries?

Mr. BROWN. I'm delighted to report that most of the national bargaining agreements have been concluded peacefully.

We do, however, have three major negotiations that are continuing under the auspices of our Representative Harris. He would, I'm sure, be able to give you more specific information on them. They are the operating brotherhoods, the UTU and the Brotherhood of Locomotive Engineers, and the Railroad Yardmasters of America is the third union involved.

In addition to that, we have a number of airlines that are currently under what we call a countdown. Pan American and their flight attendants are in a 30-day countdown. U.S. Air and the International Brotherhood of Teamsters are in a countdown which will be up on Sunday, February 14, 1982, incidentally.

We have a western railroad, which has been through a countdown and the parties are free to exercise self-help if they desire at this time.

Those are the two major airline situations and we have a number of ongoing and continuing negotiations, including a very serious one in Hawaii with local Hawaii airlines.

Senator INOUYE. I thought we were full of peace.

Mr. BROWN. We want to keep it that way, but we do have some very serious negotiations going on.

Senator INOUYE. Do you concur with the observation that the decade of the 1980's should be one of rather peaceful labor-management relations?

Mr. BROWN. Yes; I think so, Mr. Chairman. I think, though, that we have to be careful not to carry that analogy too far.

There is no question but that the economics of things are making for settlements. People are afraid to lose their jobs. Carriers are afraid to be shut down because of the heat of competition.

But there comes a point when this can go too far, as it were, and distress can become almost—can almost permeate an industry. One has to be careful when that happens because a little problem can become a large problem.

I would generally agree that the next few years should provide tranquility, more tranquility because of the demands of the economy. But I wouldn't want to go so far as to say the decade.

SUBMITTED QUESTIONS

Senator INOUYE. Mr. Chairman, I thank you very much, and Mr. Harris, sir. We have several other questions we would like to submit to you for your consideration and response. Thank you.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

LOCAL BOARDS OF ADJUSTMENT

Question: To what extent has the Board's caseload been reduced by referring new grievances to local boards of adjustment for resolution?

Answer: When Public Law 89-456 was approved on June 20, 1966, the National Railroad Adjustment Board had 6,245 cases pending. On December 31, 1981, the Four Divisions of the National Railroad Adjustment Board had 2,307 cases pending.

Question: How successful have local boards of adjustment been at settling disputes?

Answer: Public Law Boards have been very successful. Since the passage of PL 89-456, approximately 70,000 cases have been decided.

Question: Can greater use be made of local boards to achieve more budgetary savings?

Answer: Perhaps. However, the selection as to whether the petitioner uses the National Railroad Adjustment Board or the Public Law Board is not determined by the Board. We have noted that several organizations which have not historically used the public law board tribunal have recently begun using it for discipline cases.

SAFEGUARDING RIGHTS OF EMPLOYEES

Question: Has there been any instance where the National Mediation Board has refused to permit a union that is dissatisfied with its bargaining representative to decertify that representative in order to select one who would be responsive to union members' wishes and interests?

Answer: The National Mediation Board will accept an application from any organization or individual to represent a craft or class of employees when employees desire to change from one representative to another. The application is made on the Board's standard application form, and must be accompanied by the required showing of interest. During FY 1977-80, the Board conducted 93 elections involving challenges to incumbents.

Question: What grievance procedures are available to rail and air carrier employees who feel the Board has prevented decertification of a bargaining representative?

Answer: The Railway Labor Act, unlike the National Labor Relations Act, contains no statutory procedure for decertification of a representative. Therefore, the Board does not conduct decertification elections.

Question: What changes can you suggest to institutionalize procedural rights, instead of leaving them to the discretion of the Board?

Answer: We do not believe any changes are needed.

EMERGENCY BOARDS

Question: How many emergency boards do you expect will have to be created in fiscal year 1983 in the railroad industry?

Answer: We are estimating that three emergency boards will be created under section 10 of the Railway Labor Act and five boards will be created under the new section 9A.

Question: In developing your budget request, how do you project the need for emergency boards?

Answer: The Board is not in a position to predict with any great precision the number of emergency boards that may be created during a given fiscal year. In making our estimate we rely heavily on the state of the economy and the collective bargaining history of the major participants involved in negotiations for that year.

Question: In recent years, how accurate has the Board been in estimating the need for emergency boards?

Answer: In our appropriation request for FY 1981, we estimated that six emergency boards would be created during FY 1980 and five during FY 1981. In fact, two emergency boards were created in FY 1980 and none in FY 1981. It is important to note, however, that in years when we overestimate the need for emergency boards, it is our long-standing practice to return any unexpended funds from this activity to the U. S. Treasury.

ADP

Question: What progress has been made implementing automatic data processing operations?

Answer: Development of the NMB computer is on-track. A case scheduling system for the Executive Secretary is operational for open representation cases with the entry of open mediation cases just beginning. A closed-case database for representation cases has been put into productive use by the Research Department. A litigation tracking system has also been put on-line for the General Counsel's office. Future projects include personnel, payroll, and travel expenses systems.

Question: What budgetary savings will result from implementation of the Case Tracking System, which you indicated in last year's testimony was being developed?

Answer: The Board's primary objective in developing and implementing the Case Tracking System (CTS) was to increase our ability to identify and retrieve information crucial to the decision-making process. This objective has been realized and, as a result, there has been a substantial increase in staff productivity. Research assignments that at one time required as much as a month of concentrated manual effort can be accomplished in a matter of minutes through the proper use of the computer system. As a significant by-product, the automated system has improved control over the security and integrity of the Board's resources.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

STATEMENT OF ROBERT A. ROWLAND, CHAIRMAN

ACCOMPANIED BY:
PAUL A TENNEY, CHIEF ADMINISTRATIVE LAW JUDGE
EARL R. OHMAN, JR., ACTING GENERAL COUNSEL
JAMES R. MEADOWS, EXECUTIVE DIRECTOR
LARRY A. HOSS, DIRECTOR, OFFICE OF FINANCE AND ADMINISTRATIVE SERVICES

SUBCOMMITTEE PROCEDURE

Senator INOUYE. Our next witness is the Chairman of the Occupational Safety and Health Review Commission, Mr. Robert Rowland.

Welcome. We have received your statement and, without objection, that statement will be made part of the record.

Do you wish to introduce your staff before proceeding?

[The statement follows:]

STATEMENT OF ROBERT A. ROWLAND

Mr. Chairman, I appreciate the opportunity to present for your consideration the fiscal year 1983 appropriation request in the amount of $6,316,000, for the Occupational Safety and Health Review Commission. This request represents a decrease of $776,000 and a reduction of five positions from the resource levels approved by the Congress for fiscal year 1982.

The details of the changes in funding requirements are provided in the submission before you. However, I would like to highlight the significant facts of our submission.

The workload of the Commission saw a significant decrease in fiscal year 1981 from fiscal year 1980. In fiscal year 1981, the Commission received 3,739 new cases, which was a decrease of 4,224 cases, or 53 percent from the fiscal year 1980 volume of 7,963 cases. Current expectations are that the Commission will receive an estimated 3,640 new cases in fiscal year 1982 and 3,515 new cases in fiscal year 1983.

The case disposition rate of the Commission's administrative law judges increased from a productivity average of 120 cases per administrative law judge in fiscal year 1980 to an average of 130 cases per administrative law judge in fiscal year 1981, which is a 9-percent increase in productivity.

The backlog of cases before the Commission's administrative law judges and the Commission members continues to decrease. The backlog of cases before the administrative law judges was 2,361 cases at the beginning of fiscal year 1981 and 1,094 at the end of fiscal year 1981. The backlog of cases before the Commission members was 342 cases at the beginning of fiscal year 1981 and 264 cases at the end of fiscal year 1981. We shall continue our efforts to reduce this backlog as expediently as possible. However, as I have indicated in our submission, the complexity and difficulty of cases on review can be expected to increase during fiscal year 1983.

The significant decline in the caseload before the Commission is attributed primarily to the change in the post-citation policy by the Occupational Safety and Health Administration of the Department of Labor, in October 1980. As a result of this caseload decline, it was determined that resources of the Commission were in excess of those required to fulfill the Commission's functions and it was necessary to initiate a reduction-in-force action during the second quarter of fiscal year 1982, which affected 31 full-time permanent positions, or approximatley 20 percent of the Commission's staff at the beginning of fiscal year 1982. We are unable to determine at the present time if the downward trend in the contested case rate has stabilized.

Mr. Chairman, I view the mission of the Occupational Safety and Health Review Commission to be that of making an important contribution to the reduction in the number and severity of job-related injuries, illnesses, and fatailities. As chairman of the Commission, I recognize my responsibility to carry out this mission as effectively as possible.

This concludes my statement. My staff and I are here to answer any questions you may have.

INTRODUCTION OF ASSOCIATES

Mr. ROWLAND. Mr. Chairman, on my left is Larry Hoss, who is the Director of the Office of Finance and Administrative Services and James Meadows, the Executive Director. On my right is Paul Tenney, the Chief Administrative Law Judge and to his right is the Commission's General Counsel, Earl Ohman.

We have submitted our statement and I would like to let that stand and answer your questions at this time.

Senator INOUYE. Would you tell me how you calculate your budgetary needs, based on the level of OSHA's?

Mr. ROWLAND. I don't understand your question.

Senator INOUYE. We have been advised that your budget is based upon the number of inspections carried out by the agency.

Mr. ROWLAND. That's true to a point. The notices of contests that the Commission receives is a result of the OSHA inspection level each fiscal year. An estimate of the number of contests the Commission will receive from those inspections is made, and from that estimated contest rate, other estimates are made in regard to staff resources required and all other estimated associated costs that would be incurred in the operation of the agency. So, our budget considerations are primarily based upon the notice of contest rate. That contest rate had risen to approximately 12.5 percent of OSHA inspections for fiscal year 1980. However, during fiscal year 1981, the contest rate decreased to approximately 6.6 percent of OSHA inspections. The budget request before you for fiscal year 1983 reflects that decrease in caseload.

Senator INOUYE. If appropriations were cut 20 percent for Federal OSHA inspections and 10 percent for State inspections, how much could your budget be cut to reflect reduced workload?

Mr. ROWLAND. I'm not sure that I can answer that, because it depends upon the rate of the contests. We have experienced a very sharp decline in the number of contests filed since October 1980, due to settlement procedures within OSHA. A reduction in OSHA inspections would not necessarily result in a corresponding decrease in Commission workload as it is possible that OSHA might direct their inspection efforts at industries or geographical areas which presently have a high contest rate. This possible action could result in the present contest rate remaining the same or even possibly increasing.

Senator INOUYE. So the new targeting system is not helping your workload at all?

Mr. ROWLAND. The new what, sir?

Senator INOUYE. The new OSHA enforcement targeting system.

Mr. ROWLAND. I'm not sure that we can say what it is doing at this time, because the trend of reduced contests which began in October 1980 was due to a policy change which allowed area directors to settle cases before the notice of contest was filed. What it has done is to reduce our caseload by an enormous number, but it has not reduced our hearings by a substantial amount. It is the simple cases which have been eliminated, rather than the difficult ones.

Senator INOUYE. What impact do you expect the shift of jurisdiction over the sand and gravel mines from the Mine Safety Administration to OSHA will have on your agency's workload?

Mr. ROWLAND. To be frank with you, I do not have any figures on that. We have not made a study of what that is going to do to them.

Senator INOUYE. Whatever it is, it is going to be a little more?

Mr. ROWLAND. I think it will be. I will be happy to look into that and to answer that.

Senator INOUYE. I would appreciate that, because that would have to be considered when the committee acts upon the appropriations.

Mr. ROWLAND. I have no figures on just how many inspections or how many contests have been involved in that industry. That's the problem. I would have to get that, I presume, from Mine Safety to get some idea of what that would add.

[The information follows:]

During fiscal year 1980, the Mine Safety and Health Review Commission received 3,261 new cases and received 2,306 new cases during fiscal year 1981. Of these cases approximately 300 to 400 were open-pit cases in fiscal year 1980 and approximately 200 to 300 were open-pit cases in fiscal year 1981. Based upon these numbers, approximately 10 to 13 percent of the total number of cases recieved by the Mine Safety and Health Review Commission would be open-pit cases and I would expect the Commission would receive approximately the same number. I would not expect the new caseload to require an increase in Commission staff resources.

SUBMITTED QUESTIONS

Senator INOUYE. We have a few other questions we would like to submit to you, Mr. Chairman. I hope you can consider them and respond to us, sir.

Mr. ROWLAND. I would be happy to.

Senator INOUYE. Thank you very much.

Mr. ROWLAND. Thank you.

[The following questions were not asked at the hearing but were submitted for response for the record:]

QUESTIONS SUBMITTED BY THE SUBCOMMITTEE

Question.—Combining OSHA and Mine Safety Review Commissions—Why couldn't the OSHA and Mine Safety Review Commissions be combined, at least to the extent of sharing administrative costs?

Answer. I do not think that I have sufficient knowledge of the Mine Safety and Health Review Commission or its work to give an informed opinion at this time as to whether or not the Mine Safety and Health Review Commission and the Occupational Safety and Health Review Commission should be combined.

Question.—Caseload—How many cases are currently pending?

Answer. The backlog of cases before the administrative law judges was 910 cases as of January 31, 1982. The backlog of cases before the Commission members was 246 cases as of January 31, 1982.

Question. What is the current processing time for a case filed with the Review Commission under the simplified process? Under the regular process?

Answer. The current processing time for a case filed with the Commission which is processed under the simplified proceeding process is approximately 138 days from receipt of notice of contest. The current processing time for those cases that proceed through the regular process is approximately 223 days for those cases that are disposed of by settlement and approximately 390 days for those cases that are disposed of by a hearing disposition.

Question. How many new cases a year are filed with the Review Commission?

Answer. During fiscal year 1980, 7,963 new cases were filed with the Review Commission. During fiscal year 1981, 3,739 new cases were filed with the Commission.

Question.—Gift statute—Why does the Commission need a gift statute?

Answer. Our need for a gift statute is twofold. One, it would allow the Review Commission to utilize the services of law school interns. The students receive credit and experience, and the Government receives these services at no cost. Two, from time to time, the Review Commission is invited to speak and participate in seminars, workshops, and continuing legal education programs. Our ability to appear at these functions in the future will be hampered due to reduced budgets. However, in the past, many of the institutions conducting these events have offered to incur the OSHRC expenses which we have had to decline due to the fact that the Review Cosmmission does not operate with a gift statute.

A gift statute for the Occupational Safety and Health Review Commission to cover these two areas would be appreciated and would also be beneficial to the Government in its efforts to cut costs.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

STATEMENT OF ROSEMARY M. COLLYER, CHAIRMAN

ACCOMPANIED BY:
RICHARD V. BACKLEY, COMMISSIONER
FRANK F. JESTRAB, COMMISSIONER
A. E. LAWSON, COMMISSIONER
PAUL MERLIN, CHIEF ADMINISTRATIVE LAW JUDGE

SUBCOMMITTEE PROCEDURE

Senator INOUYE. Our next witness is the chairperson of the Federal Mine Safety and Health Review Commission, Ms. Rosemary Collyer.

Welcome. It is about time we had a lady.

Ms. COLLYER. Thank you very much.

PREPARED STATEMENT

Mr. Chairman, in order to save time, I will not at this time present the full statement we have submitted to you.

Senator INOUYE. We have received that statement, and without objection, it will be made a part of the record.

[The statement follows:]

STATEMENT OF ROSEMARY M. COLLYER

Mr. Chairman, it is a pleasure to appear before you and the Committee to present justification for our fiscal year 1983 budget request in the amount of $3,686,000.

The budget request is $367,000 more than our fiscal year 1982 appropriation. This additional funding, I believe, accurately reflects our needs and is based on our projected workload and present experience with the 1982 appropriation.

Permit me to recap our current situation. The House passed a fiscal year 1982 budget for the Commission in the amount of $4,486,000. The President asked for a reduction of 12%, to $3,947,000. Without explanation, this Subcommittee reduced the figure under the third continuing resolution to $3,319,000. At the same time, the pay cap for Federal employees - including all our administrative law judges - was lifted.

In response to the retroactive effect of the third continuing resolution and to increased payroll costs, we have reduced the size of the agency by almost one-third: we have terminated 22 employees, including three administrative law judges. We are left with a total complement of 52 persons to carry out the entire adjudicatory function of the agency. Because over 70% of our budget is for personnel, we had no alternative means of coming within the constrictions of the 1982 budget. We have also left unfilled seven positions, including General Counsel, Executive Director, Counsel to the Chairman and Librarian. We do not presently have a fifth Commissioner or that Commissioner's staff and to be perfectly frank, we cannot afford one until the beginning of the next fiscal year.

Despite these cuts, we are, under an OMB apportionment, now operating on a deficiency basis that would result in our running out of money altogether in fiscal '82 in the absence of a Pay Supplemental to cover the unanticipated pay increases.

With a Pay Supplemental, which we now estimate to be $225,000, we would operate in fiscal year 1982 with a total appropriation of $3,544,000. The additional monies between that amount and our requested budget for next year will be used to fund the fifth Commissioner and his or her counsel and secretary. We hope to fill some of our other vital positions when we have paid the last severance pay and terminal leave costs of the recent reduction in force.

We believe that we will be able to fulfill our role in resolving enforcement disputes between the Secretary of Labor and the operators of the nation's mines, and provide a forum for resolution of discrimination claims by miners with the personnel and budget I have just outlined.

For the sake of clarity, let me note that the Commission is fully independent and not in any way a part of the Department of Labor or the Mine Safety and Health Administration.

The Commission is presently operating with 13 Administrative Law Judges and four Commissioners. The administrative law judges conduct hearings and issue decisions in contested cases initiated by the Secretary of Labor, mine operators and miners. They are also required by the Mine Act to evaluate and approve settlement agreements. We have two administrative law judge offices: one in Falls Church, Virginia and one in Denver, Colorado.

The Commission is charged with the responsibility of reviewing the enforcement activities of the Secretary of Labor and protecting miners against unlawful discrimination. The Commission's functions include review of administrative law judge decisions, ruling on Petitions for Discretionary Review and issuing of decisions that affirm, modify or vacate decisions directed for review. If not reviewed, the administrative law judge's decision becomes the final order of the Commission.

Since 1978, when the Mine Act became effective, the mining community has developed a better understanding of the strictures and requirements of the law; this, in turn, has led to a reduction in the absolute numbers of matters brought before this agency. Despite this fact, the number of cases actually tried before an administrative law judge has remained constant.

We began 1981 with 2825 pending cases and received 2306 new cases during the year. Of these, 2883 were disposed of prior to hearing, by settlement approvals at the administrative law judge level. These numbers demonstrate a commendable decrease in the mood of confrontation that clouded the first years of enforcement under the Mine Act.

However, in 1981, 550 cases were sufficiently complex and important to the parties involved that they required a full evidentiary hearing before an administrative law judge. This number is almost identical to the 553 cases tried by our judges in 1980. In addition, the average trial time for hearings is growing as matters become more complicated. By the close of the year, the pending caseload was reduced to 1698.

Petitions requesting review of administrative law judge's decisions were filed in 92 cases during the fiscal year. The Commissioners voted to grant review of 54 of those cases. In addition, the Commissioners voted to review three cases in which petitions had not been filed. The Commissioners issued decisions or orders terminating cases before the Commission in 79 cases during the year. Sixty-one cases were pending review at the year's close.

These figures support the statements made to this committee by former Chairman Richard V. Backley last year: the numbers of cases initiated by mine operators and miners, cases which tend to be more complex and require longer hearings, continue to rise. The number of penalty cases filed by the Mine Safety and Health Administration continues to decline; these penalty cases are also more likely to settle before trial.

I should add one caveat to our 1981 figures: a lengthy coal strike in 1981 undoubtedly affected enforcement activities by MSHA at the Department of Labor and correspondingly we noted an effect on our caseload.

We presently estimate that the workload of the agency will remain approximately the same during fiscal year 1982, because of the current drop in market prices which has led to reduced tonnages across the country. We anticipate an increase in caseload in 1983 to approximately 2300 new matters as mining activity resumes. We fully intend to meet this workload despite our reduction in force.

We do not seek to add personnel except in the most vital positions: a much-needed fifth Commissioner, Counsel for myself and the new Commissioner, a General Counsel, Executive Director and Librarian. A very small number of support staff will be needed to assist these individuals.

Our budgetary request for fiscal year 1983 will not add unnecessary costs or personnel to the Federal budget. It will allow us to function and provide prompt, fair disposition of cases.

Thank you for the opportunity to present this statement. I will be pleased to respond to questions from the Committee.

INCREASE IN 1983 BUDGET

Ms. Collyer. I would like to, if I may, bring to your attention a few of the items in that statement, because they bear very much on our small request for an increase in our funding for next year.

We are requesting an increase of $367,000 from our 1982 funding for fiscal 1983. That increase is to permit us to fill some vital vacancies that now exist on the Commission.

As a result of a budget cut of well over $1 million for this Commission that occurred under the third continuing resolution, we have had to reduce the force of the agency by almost one-third. We are now left with 52 total employees to hear and decide, and then decide on review, all cases arising under the Mine Safety and Health Act.

INDEPENDENT AGENCY STATUS

Let me, for clarity, note for the record that we are not a part of the Mine Safety and Health Administration. We are not part of the Department of Labor. The Federal Mine Safety and Health Review Commission is a completely separate, independent agency. Additional funding, therefore, for MSHA does nothing for us.

We presently are down by 22 employees, and we have not filled the positions of the general counsel, executive director, and counsel to the chairman; also we have no fifth commissioner. With me today are our four commissioners and our chief administrative law judge. There is no fifth commissioner. And to be frank, we have no money this year for a fifth commissioner.

The request for next year of a minor increase would allow us to fund a fifth commissioner and a secretary and counsel for that individual and to fill some of the vital vacancies that we are now laboring under.

Beyond that, I remain open to your questions.

UNFILLED VACANCIES

Senator Inouye. How many staff persons will you be able to hire if we appropriated the sum requested, the additional sum?

Ms. Collyer. Mr. Chairman, we have separated 22 employees, including 3 administrative law judges. We do not plan to fill those vacancies.

The only vacancies we do seek to fill are the fifth commissioner and his or her staff, an executive director, a general counsel, a librarian, and a counsel for myself. I have no counsel at the present time. The Commissioner, of course, will be appointed by the President.

Senator Inouye. So you do not seek to increase your budget to the last fiscal year's level?

Ms. Collyer. No, sir; the President's budget for fiscal 1982 was $3.9 million. The Senate Appropriations Committee reduced us to $3.3 million. We are presently operating under an Office of Management and Budget apportionment on a deficiency basis in order to remain open.

PAY SUPPLEMENTAL

If a pay supplemental is approved for us as requested, approved by the Senate and the House, we would, in fact, operate this year at $3.5 million. The increase between that amount and our request is the cost of the fifth commissioner.

Senator INOUYE. I believe it would be safe for me to advise you that we made a grievous error. It was an oversight.

Ms. COLLYER. Thank you.

Senator INOUYE. We will get your money back.

Ms. COLLYER. Thank you. I appreciate that.

Senator INOUYE. We do make errors sometimes, all too often.

Ms. COLLYER. Thank you.

Senator INOUYE. The administration made a last-minute adjustment to the Labor Department budget for the Mine Safety and Health Administration [MSHA], adding $2 million for fiscal 1982 and $15 million for fiscal 1983 inspection activities.

CASELOAD

Has your budget also been adjusted to reflect the increased appeals cases likely to result from a higher level of mine safety inspections?

Ms. COLLYER. No, sir; we continue to operate under the $3.19 million appropriated to us under the third continuing resolution. And there is no arrangement for us under the extra money for MSHA.

Senator INOUYE. Do you think that you can carry the load with the amount being requested?

Ms. COLLYER. We are determined, if we get the $3.686 million we are asking for next year, to do just that. That will allow us to do that.

DENVER OFFICE

Senator INOUYE. In 1979 you opened a Denver office to better serve the interests of miners and mine operators in the Western United States. Do you have enough money in that budget to keep the Denver office open?

Ms. COLLYER. We had four administrative law judges, three law clerks for the judges, and two secretarial positions in Denver under the previous budget. We will now have three judges and no clerks. We have completely eliminated law clerks for all our judges. The two secretarial positions will remain.

We will cut back on the amount of space that we are renting, if that is possible under our lease. Thereby, we intend to keep that office open. It serves an important function for this agency as an institution and allows accessibility to this judicial agency for people in the West.

Senator INOUYE. It will be open, but will it be able to function appropriately?

Ms. COLLYER. We expect so.

EDUCATIONAL SEMINARS

Senator INOUYE. The subcommittee has been advised that your budget no longer includes funding for Review Commission staff to conduct educational seminars. Do you go along with this?

Ms. COLLYER. Because of the cut in our budget, our ability to participate as speakers and instructors, if you will, in various forms of seminars is severely curtailed. To that extent, I agree with you.

Senator INOUYE. Have you considered requesting legislation to permit the Commission to accept gifts of donated time to continue educational seminars at no expense to the taxpayers?

Ms. COLLYER. We have not looked at that question in great detail yet, Senator, because we do not have the staff wherewithal to address that issue at this time. Hopefully, when we have an executive director, we will be in a position to pay attention to that kind of alternative.

SAND AND GRAVEL CASES

Senator INOUYE. Last year Commissioner Backley testified that about 15 or 16 percent of your workload involved sand and gravel cases. As you know, this jurisdiction over sand and gravel enforcement has now been transferred to OSHA.

How much do you expect your workload to decline as a result of this transfer?

Ms. COLLYER. The sand and gravel cases, Mr. Chairman, have varied from between 10 to 15 percent of the total workload of the Commission. Most of those cases, in fact, are the simpler cases that are settled prior to hearing. So that in terms of actual work time, they have not been very consuming.

Those settlements would be before the administrative law judges and never reach the Commission on review. Therefore, the transfer will not particularly assist us.

NUMBER OF HEARINGS

In 1980 we held 553 hearings. In 1981, we held 550. Despite a reduction in the absolute number of cases that are initiated before us, the number that go to hearing remains constant.

Senator INOUYE. I commend you, madam, for carrying on your responsibilities with these cutbacks.

Once again, the subcommittee wishes to assure you that we will do our best to cure our oversight.

Ms. COLLYER. Thank you very much.

Senator INOUYE. You will get your money.

Ms. COLLYER. Thank you.

SUBCOMMITTEE RECESS

Senator INOUYE. The subcommittee will now stand in recess subject to the call of the Chair.

[Whereupon, at 12:04 p.m., Friday, February 12, the subcommittee was recessed, to reconvene at 1:30 p.m., Monday, February 22.]

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